

FILED

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name BROWN, Charles Lloyd
(Last) (First)

- 28 - 2008

~~CHARLES W. WIEKING~~
CLERK, U.S. DISTRICT COURT
~~NORTHERN DISTRICT OF CALIFORNIA~~

Prisoner Number E-25371

Institutional Address Correctional Training Facility, P.O. Box 689,
East Dorm 153-Low, Soledad, CA. 93960-0689 **(PR)**

(PR)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHARLES BROWN

(Enter the full name of plaintiff in this action.)

VS.

Ben Curry, Warden

(Enter the full name of respondent(s) or jailor in this action.)

CV } 08 3596

Case No. _____
(To be provided by the clerk of court)

**PETITION FOR A WRIT
OF HABEAS CORPUS**

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

1 **Who to Name as Respondent**

2 You must name the person in whose actual custody you are. This usually means the Warden or
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
 7 but may be subject to such custody in the future (e.g., detainers), you must name the person in whose
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
 9 was entered.

10 **A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE**

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
 13 County Superior Court, Oakland):

Superior Court of CA.	Placer County
-----------------------	---------------

15 Court Location

16 (b) Case number, if known 1259

17 (c) Date and terms of sentence July 17, 1989, 17 yrs. to life

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
 19 parole or probation, etc.) Yes xxx No

20 Where?

21 Name of Institution: CORRECTIONAL TRAINING FACILITY

22 Address: P.O. Box 689, Soledad, CA. 93960-0689

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Penal Code §§187, 1203.69(a)(1), 12022(a)(b)

27 _____

28 _____

3. Did you have any of the following?

Arraignment: Yes xxx No

Preliminary Hearing: Yes xxx No

Motion to Suppress: Yes xxx No

4. How did you plead?

Guilty _____ Not Guilty x x x Nolo Contendere _____

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury x x x Judge alone Judge alone on a transcript

6. Did you testify at your trial? Yes xxx No

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes xxx No

(b) Preliminary hearing Yes xxx No

(c) Time of plea Yes xxx No

(d) Trial Yes xxx No

(e) Sentencing Yes xxx No

(f) Appeal Yes xxx No

(g) Other post-conviction proceeding Yes xxx No

you appeal your conviction? Yes xxx No

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes xxx No

Year: 1989 Result: Denied

Supreme Court of California Yes xxx No

Year: N/A Result: Denied

Any other court Yes xxx No _____

Year: N/A Result: Denied

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes _____ No xxx

(c) Was there an opinion? Yes _____ No _____

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes _____ No xxx

If you did, give the name of the court and the result:

have you previously filed any petitions, applications or motions with respect to
court, state or federal? Yes _____ No xxx

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____

b. _____

C. _____

d. _____

Result: _____ **Date of Result:** _____

II. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

1 a. _____
2 b. _____
3 c. _____
4 d. _____

5 Result: _____ Date of Result: _____

6 III. Name of Court: _____

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific):

9 a. _____
10 b. _____
11 c. _____
12 d. _____

13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____
18 b. _____
19 c. _____
20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes ____ No ____

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: SEE ATTACHED PETITION FOR WRIT OF HABEAS CORPUS

6 _____
7 Supporting Facts: SEE ATTACHED PETITION
8 _____
9 _____
10 _____

11 Claim Two: SEE ATTACHED PETITION FOR WRIT OF HABEAS CORPUS

12 _____
13 Supporting Facts: SEE ATTACHED PETITION
14 _____
15 _____
16 _____

17 Claim Three: SEE ATTACHED PETITION FOR WRIT OF HABEAS CORPUS

18 _____
19 Supporting Facts: SEE ATTACHED PETITION
20 _____
21 _____
22 _____

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 _____
26 _____
27 _____
28 _____

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 SEE ATTACHED MEMORANDUM OF POINTS AND AUTHORITIES

5 _____

6 _____

7 Do you have an attorney for this petition? Yes No

8 If you do, give the name and address of your attorney:
9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12

13 Executed on July 17, 2008

14 Date

Charles Brown

15 Signature of Petitioner

16

17

18

19

20 (Rev. 6/02)

21

22

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27

28

EXHIBIT 1

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF PLACER


JOHN M. DAVIS
EXECUTIVE OFFICER & CLERK
By  Deputy

In the Matter of the Petition of) Case No. 737
CHARLES BROWN)
For Writ of Habeas Corpus)
) RULING ON MOTION TO RECONSIDER DENIAL
) OF PETITION FOR WRIT OF HABEAS CORPUS
)
)
)
)

13 Defendant's Petition for Writ of Habeas Corpus was denied by a ruling
14 filed on June 26, 2007. Petitioner subsequently filed a Motion for
15 Reconsideration of the order denying his petition.

The Motion for Reconsideration is hereby denied.

Dated this 7th day of January, 2008

Robert P. McElhany,
Judge of the Superior
Court

EXHIBIT 2

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

F I L E D

MAR 13 2008

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT
BY _____ Deputy

In re CHARLES BROWN on Habeas Corpus.

C058284
County
No.

BY THE COURT:

The petition for writ of habeas corpus is denied.

Dated: March 13, 2008

SCOTLAND, P.J.

cc: See Mailing List

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST

Re: In re CHARLES BROWN on Habeas Corpus.
C058284

Copies of the attached document have been sent to the individuals checked below:

Charles Brown
CDC:E-25371
Correctional Training Facility
P.O. Box 686
Soledad, CA 93960

Office of the State Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

COURT OF APPEAL, THIRD APPELLATE DISTRICT

Criminal C058284

In re CHARLES BROWN on Habeas Corpus.

Judge:

Nature of Action: hc Habeas corpus

ATTORNEY - LITIGANTS

In propria persona

Petitioner
Charles Brown
E-25371
Correctional Training Facility
P.O. Box 686
Soledad, CA 93960

Office of the State Attorney General (Bar No. SAGSAC-01)
P.O. Box 944255
Sacramento, CA 94244

Respondent
The People

DOCKET EVENTS

03/05/2008
Petition for a writ of habeas corpus filed.
(ms)

EXHIBIT 3

Court of Appeal, Third Appellate District - No. C058284
S162122

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re CHARLES BROWN on Habeas Corpus

The petition for review is denied.

**SUPREME COURT
FILED**

MAY 21 2008

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

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4 People v. Stuart

5 (1956) 47 Cal.2d 167, 175 [7] 302 P.2d 5, 55 A.L.R.2d 705

6 People v. Smith

(1955) 44 Cal.2d 77, 79 [2] 279 P.2d 33

7 In re McVickers

8 (1946) 29 Cal.2d 264, 278, 176 P.2d 40

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10 People v. Ralph

11 (1944) Cal.2d 575, 581 [2] 150 P.2d 401

12 Biggs v. Terhune

(9th Cir. 2003) 334 F.3d 910, 914, 915, 916

13 In re Ramirez

14 (2001) 94 Cal.App.4th 549, 564-565, 571

15 Edward v. Balisok

(1997) 520 U.S. 541, 648

16 In re Caswell

17 92 Cal.App.4th 1017, 1029

18 People v. Dubon

90 Cal.App.4th 949, 952, (2001)

19 Charlton v. Federal Trade Comm.

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21 McQuillion v. Duncan

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22 In re Smith

109 Cal.App.4th 489 (2003)

24 Kentucky Dept of Corrections v. Thompson

490 U.S. 454, 459-460 (1989)

25 Board of Pardons v. Allen

(1987) 482 U.S. 369, 376-78

27 Greenholtz v. Inmates of Neb. Penal & Corr. Complex

(1979) 442 U.S. 1, 11-12

1 POINTS AND AUTHORITIES (continued)

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3 U.S. v. Guagliardo
4 275 F.3d 868-872, (9th Cir. 2002)

5 Graynet v. City of Rockford
6 408 U.S. 104, 108-109 (1972)

7 Irons v. Warden
8 358 F.Supp.2d 936 (E.D. Cal. 2005)

9 In re Scott
10 34 Cal.Rptr.3d at 919-920, 133 Cal.App.4th at 594-595

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12 37 Cal.Rptr.3d at 335

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14 29 Cal.4th at 654-661

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16 114 Cal.App.4th 343, 370,372

17 Caswell v. Calderon
18 363 F.3d 832, 389 (9th Cir. 2004)

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20 119 Cal.4th at 899

21 Scott
22 133 Cal.App.4th at 595, 34 Cal.Rptr.3d at 919-920

23 Superintendent v. Hill
24 472 U.S 445, 455-457 (1985)

25 In re Minnis
26 (1972) 7 Cal.3d 639, 643, n.2

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28 (1964) 60 Cal.2d 631, 643, n.8

29 Masoner
30 2004 WL1090177 *1-2

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33 Williams v. State of New York
34 (1949) 337 U.S. 241, 247

35 Sass v. Calif. Board of Prison Terms
36 376 F.Supp.2d (E.D. Cal. 2005)

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3 In re Lee
4 49 Cal.Rptr.3d 931

5 In re Elkins
6 50 Cal.Rptr.3d 503

7 Rosenkrantz v. Marshall
8 774 F.Supp.2d, 1063 (C.D. Cal. 2006)

9 Blankenship v. Kane,
10 2006 WL5215627 *3 (N.D. Cal. 2006)

11 Murillo v. Perez
12 2005 L2592420 *3n.l. (C.D. Cal. 2005)

13 Siafullah v. Carey
14 2005 WL1555389 *8 (E.D. Cal. 2005)

15 Superintendent Steve Lomas Hill
16 472 U.S. at 455, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356 (1985)

17 Rojas v. Neilson
18 428 F.3d 1229, 1232, (9th Cir. 2005) *

19 Sanchez v. Kane,
20 444 F.Supp.2d 1049 (C.D.Cal. 2006)

21 Delgado v. Lewis
22 233 F.3d 976, 982 (9th Cir. 2000)

23 Pham v. Terhune
24 400 F.3d 740, 742 (9th Cir. 2005)

25 Hines v. Thompson
26 336 F.3d 848, 853 (9th Cir. 2003)

27 Pirtle v. Morgan
28 313 F.3d 1160 , 1167 (9th Cir. 2002)

29 Powell v. Gomez
30 33 F.3d 39, 40

31 Earp v. Oronski
32 (9th Cir. 2003) 372 U.S. 293 (1963)

33 Keeney v. Tamaya-Reyes
34 504 U.S. 1, 5 1992

35 Taylor v. Maddox
36 (9th Cir. 2004) 336 F.3d 992, 1001.

1 POINTS AND AUTHORITIES (continued)

2 Title/Name

3 In re Lawrence
4 (May 22, 2007) Cal.Rptr.3d WL1475283

5 In re Elkins
6 (2006) 144 Cal.App.4th 475, 487

7 In re Lee
8 (2006) 143 Cal.App.4th 1400, 1408

9 In re Barker
10 May 29, 2007, DJDAR 7548

11 Martin v. Marshall
12 431 F.Supp.2d at p.1047

13 CCR, Title 15, Division 2
14 §2000(b)(49)
15 §2000(b)(62)(90)
16 §2402
17 §2402(a)(b)

18 Penal Codes
19 §3041
20 §3041(a)
21 §3041(b)

22 Evidence Code
23 §115

24 California Constitution, Article V
25 §8(b)

MEMORANDUM OF POINTS AND AUTHORITIES

PETITIONER WAS DEPRIVED OF HIS CONSTITUTIONALLY AND STATUTORILY PROTECTED RIGHT TO THE LIBERTY INTEREST IN THE EXPECTATION OF PAROLE UNDER PENAL CODE §3041(b) WHICH ATTACHED AT THE TIME OF INCARCERATION.

The due process clause of the 5th and 14th Amendment prohibits a state action that deprives a person of life, liberty or property without due process.

However, a person alleging such a violation must establish that (a), he had protection; (b) that he was deprived of such a protection; and, (c) that the procedure which led to the deprivation was constitutionally deficient. Kentucky Dept. of Corrections v. Thomas, 490 U.S 459-460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989); McQuillion v. Duncan, 306 F.3d 895, 900 (9th Cir. 2002).

A. EXISTENCE OF A LIBERTY INTEREST

The Supreme Court held in 1979, and reiterated in 1987 that, "a state's statutory scheme, if it uses mandatory language, creates a presumption that parole release will be granted when or unless certain designated findings are made, and then, thereby, gives rise to a constitutionally protected 'Liberty Interest'". McQuillion v. Duncan, supra, 306 F.3d at 901, (citing Greenholtz v. Nebraska Penal Institute, 442 U.S. I, 7, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979) and Board of Pardons v. Allen, 482 U.S. 369, 373, 107 S.Ct. 2415, 96 L.Ed.2d 303 (1987)).

Recently, our Ninth Circuit has "held" that California's parole scheme created such a liberty interest because Penal Code §3041 uses mandatory language and is similar to the Nebraska and Montana statutes addressed in *Greenholtz*, *supra*, and

1 Allen, supra. (See McQuillion, supra, 306 F.3d at 901-901).

2 Not only did the Ninth Circuit hold that "Section 3041 of
 3 the Penal Code creates in every inmate a cognizable liberty
 4 interest in parole which is protected by the procedural
 5 safeguards of the due process clause," but further held that
 6 "the interest arises upon the incarceration of the inmate."
 7 Biggs v. Terhune, 334 F.3d 910, 914-915 (9th Cir. 2003).

8 Two United States Supreme Court decisions, Greenholtz v.
 9 Inmates of Nebraska Penal and Correctional Complex, (1979) 442
 10 U.S. 1, 12, decided in 1979 and Board of Pardons v. Allen,
 11 (1987) 482 U.S. 369, 381, decided in 1987, held the Federal Due
 12 Process Clause creates a constitutional liberty interest for
 13 convicted persons in certain jurisdictions. The existence of
 14 this right depends on whether the state employs "mandatory
 15 language" indicating parole will be granted if certain findings
 16 are made, Board of Pardons v. Allen, supra, 482 U.S. at pages
 17 377-381. In 2002 the Ninth Circuit examined the California
 18 parole scheme in McQuillion v. Duncan, (9th Cir. 2002) 306 F.3d
 19 895 and found it "uses mandatory language and is largely
 20 parallel to the schemes found in Greenholtz and Allen,"
 21 McQuillion v. Duncan, supra, 306 F.3d at page 901. Accordingly,
 22 the McQuillion court found a "liberty interest" was created under
 23 the federal constitution for state prisoners in California,
 24 McQuillion v. Duncan, supra, 306 F.3d at page 901.

25 While it is true post McQuillion, the California Supreme
 26 Court had occasion to visit and decide in In re Dannenberg that
 27 "life" prisoners did not have a liberty interest in the
 28 expectation that the Board of Parole Hearings would engage in

1 "uniform term" analysis under Penal Code §3041(a) if it
2 demonstrated that public safety warranted denial of parole under
3 §3041(b). That court did not hold, however, that there is no
4 protected liberty interest in parole whatsoever. Indeed,
5 California courts have continued to analyze such claims. See In
6 re Shaputis, 135 Cal. App. 4th, 217, 224, 231-232, Cal.Rptr.3d
7 324 (citing Dannenberg); In re Scott, 133 Cal.App.4th 573, 34
8 Cal.Rptr.3d 905 (2005); In re Lee, 49 Cal.Rptr.3d 931; In re
9 Elkins, 50 Cal.Rptr.3d 503; In re Lawrence, (May 22, 2007),
10 Cal.Rptr.3d WL1475283. Post Dannenberg, even federal courts have
11 uniformly, save one District court decision (Eastern District of
12 California), which seemingly reversed itself in its very next
13 case, [see Sass v. California Board of Prison Terms, 376
14 F.Supp.2d, 975, 982 (E.D. Cal. *2005), which was recently
15 overruled by the Ninth Circuit in Sass v. Board of Prison Terms
16 376 F.Supp.2d, 975, 982, (9th Cir. 2006), and is currently under
17 appeal. (See and compare Sass, supra, to Bair v. Folsom State
18 Prison, 2005 WL2219110 fn.3 (E.D. Cal. 2005), Report and
19 Recommendations adopted by 2005 WL3081634 fn.1 (E.D. Cal.
20 2005).], have followed the reasoning in McQuillion, supra,
21 establishing a liberty interest. Because the Ninth Circuit
22 analyzed the liberty interest which arose from California's
23 Penal Code §3041(a), Dannenberg does not undermine the Ninth
24 Circuit decision in McQuillion. Therefore, McQuillion v. Duncan
25 holds that the mandatory language of Penal Code §3041(b)
26 creating a liberty interest in parole remains controlling
27 precedent. [See Rosenkrantz v. Marshall, 774 F.Supp.2d 1063
28 (C.D. Cal. 2006); Blankenship v. Kane, 2006 WL5215627 *3 (N.D.

1 Cal. 2006); Murille v. Perez, 2005 W.2592420 *3 N.l (C.D. Cal.
 2 2005); Saifullah v. Carey, 2005 WL1555389 *8 (E.D. Cal. 2005)].

3 Thus, petitioner has clearly established not only that he
 4 has a constitutionally protected liberty interest but that he
 5 was denied this liberty by the denial of parole by the Board of
 6 Parole Hearings on July 24, , 2006.

7 **B. PROCEDURES WHICH LED TO DEPRIVATION OF LIBERTY.**

8 It is established principles of due process that a prisoner
 9 must provided notice of the hearings; and opportunity to be
 10 heard; and, statement of reasons, for denial of parole.

11 Petitioner agrees that he was provided each of these
 12 protections. However, the United States Supreme Court has
 13 expanded these protections to include:

14 "In a variety of contexts, the court has
 15 recognized decisions resulting in a loss of an
 16 important liberty interest violates due process
 17 if the decision is not supported by some
 18 evidence." Superintendent v. Hill, 472 U.S. at
 455, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356
 (1985); Rosenkrantz v. Marshall, 444 F.Supp.2d
 1063 (C.D. Cal. 2006) fn. 13; Rojas v. Neilson,
 428 F.3d 1229, 1232 (9th Cir. 2005)[Per curiam]

19 The court further held:

20 "Although '[T]he some evidence standard is
 21 minimally stringent', Powell v. Gomez, 33 F.3d
 22 39, 40, the evidence underlying the
 23 [Governor's] decision must have some indicia of
 reliability." Hill, supra, 472 U.S. at 455-56,
 105 S.Ct. at 2774; See also Sanchez v. Kane,
 444 F.Supp.2d 1049 (C.D. Cal. 2006).

24 As an additional matter the Hill court concluded that the
 25 decision to deny parole must not be "otherwise arbitrary." Hill,
 26 supra, at 547.

27 Clearly then, the Hill analysis determined that due process
 28 requires much more than notice, opportunity to be heard and

1 statement of reason. It also requires (A). evidence which
2 supports the conclusion; (B). the evidence to be reliably
3 related to the issue of present dangerousness (CCR Title 15,
4 §2402(a)); In re Scott, supra, 1373 Cal.App.4th 593, 34
5 Cal.Rptr.3d 905; In re Elkins, 50 Cal.Rptr.3d 503; In re Lee, 49
6 Cal.Rptr.3d 931; (C). the evidence must be truthful and (D). the
7 decision must not be arbitrary or capricious. Sanchez v. Kane,
8 444 F.Supp.2d 1049 (C.D. Cal. 2006).

9 GROUND ONE:

10 THE BOARD'S DECISION TO DENY PAROLE IS
11 OTHERWISE ARBITRARY AND IS NOT SUPPORTED BY
12 "SOME EVIDENCE" CONTAINING AN INDICIA OF
RELIABILITY.

13 In combining the California and federal standards of
14 review, as they have been articulated thus far by the California
15 Supreme Court and the Ninth Circuit, respectively, the
16 commitment crime can lack the power to supply "some evidence"
17 supporting a denial of parole because of the interplay between
18 two factors - the nature of that crime and the passage of time
19 since its commission. That is, the fact there is "some evidence"
20 the crime was committed and committed a certain way at a certain
21 time does not mean that crime necessarily represents "some
22 evidence", that petitioner's release on parole will pose an
23 unreasonable risk of danger to the public safety at the present
24 time. Whether it possesses the necessary predictive value
25 depends both on the nature of the crime and how long ago it
26 happened. Petitioner's commitment offense, now over 17 years in
27 the past does not provide "some evidence" his present release
28 would represent an "unreasonable risk" of danger to the

1 community.

2 It is worth noting that the issue before this court is
 3 whether petitioner is suitable for parole, not when he should be
 4 released under the California parole system. The Board's initial
 5 task with respect to any inmate serving an indeterminate
 6 sentence is to determine whether the prisoner is suitable for
 7 parole. That is whether the prisoner "pose[s] an unreasonable
 8 risk of danger to society if released from prison. CCR, Title 15
 9 §2402." Only after the Board deems an inmate suitable is a
 10 release date set. CCR, Title 15, §2282; See also Dannenberg, 34
 11 Cal.4th 1061, 1071 (2005). ("[A] determination of individual
 12 suitability must proceed the setting of a ... parole release
 13 date.") The actual parole release date may well be (in some
 14 cases) a number of years into the future, under the Board
 15 regulations, the release date is established using a matrix that
 16 takes into account the inmate's offense of imprisonment and the
 17 circumstances in which it was committed. CCR, Title 15, §2282.

18 Supreme Court law clearly established a parole decision,
 19 like a prison disciplinary decision, deprives a prisoner of due
 20 process if it is not supported by "some evidence" or is
 21 "otherwise arbitrary." Hill, supra, at 457; McQuillion v. Duncan
 22 306 F.3d 895, 904 (9th Cir. 2002).

23 However, that evidence "must have some indicia of
 24 reliability," Scott I, supra, 119 Cal.App.4th at p.899) and
 25 "suitability determinations must have some rational basis in
 26 fact. (In re Elkins, 144 Cal.App.4th at p.489).

27 As our Supreme Court has summarized it, "the judicial
 28 branch is authorized to review the factual basis of a decision

1 of the board denying parole in order to ensure that the decision
 2 comports with the requirements of due process of law, but ... in
 3 conducting such review, the court may inquire only whether "some
 4 evidence" in the record before the board supports the decision
 5 to deny parole, based upon factors specified by statute and
 6 regulation. If the decision's consideration of the specified
 7 factors is not supported by "some evidence" in the record and
 8 thus is devoid of a factual basis, the court should grant the
 9 prisoner's petition for writ of habeas corpus and should order
 10 the board to vacate its decision denying parole and thereafter
 11 to proceed in accordance with due process of law. (Rosenkrantz,
 12 supra, 29 Cal.4th at p.658, underline added). Finally, as has
 13 been recently stated, because the overarching consideration is
 14 public safety, the test in reviewing the board's decision
 15 denying parole "is not whether some evidence supports the
 16 reasons [the board] cites for denying parole, but whether some
 17 evidence indicates a parolee's release unreasonably endangers
 18 public safety.[Citations]. Some evidence of the existence of a
 19 particular factor does not necessarily equate to some evidence
 20 the parolee's release unreasonably endangers public safety." (In
 21 re Lee, 143 Cal.App.4th at p.1408)(In re Barker, May 29, 2007),
 22 DJDAR 7548)(In re Lawrence, (May 22, 2007) Cal.Rptr.3d
 23 WL1475283)(In re Rosenkrantz, (2002) 29 Cal.4th 616, 665)(In re
 24 Dannenberg, (2005) 34 Cal.4th 1061, 1100).

25 Merely to pick pieces from evidence to create one's version
 26 sufficient to justify an action is not "some evidence"
 27 reasonably related to the circumstances sufficient to deny
 28 parole. Superintendent v. Hill, requires more. The Hill

1 requirement mandates that the evidence relied upon possess not
 2 only an "indicia of reliability" but that is is "reasonably
 3 related to the circumstances so as to constitute some evidence
 4 that the crime was 'particularly egregious'". (i.e. "reasonably"
 5 sufficient to support the decision made). See Hill, 472 U.S.
 6 445, 455-56, (1985). Accordingly, to recite in rote,
 7 circumstances of the crime sufficient under different
 8 circumstances (for instance as one would apply to first degree
 9 murder) and proclaim that sufficient under these circumstances,
 10 does not constitute "some evidence" justifying denial of parole
or establish a current danger to the public. The decision of the
 11 board is unreasonable in light of the volumes of evidence
 12 showing suitability. Furthermore, since the evidence clearly
 13 does not support the board's conclusion, the "conclusion" does
 14 not possess any "indicia of reliability" and is patently
 15 arbitrary and capricious, denying petitioner his liberty
 16 interest in parole. It is clear that the board's finding amounts
 17 to an "unreasonable" determination of the facts in light of the
 18 evidence available to the board at the hearing. Only by
 19 examination may the court determine whether the board's decision
 20 was in fact "unreasonable" or "objectively unreasonable."
 21 Delgado v. Lewis, 233 F.3d 976, 982 (9th Cir. 2000); Pham v.
 22 Terhune 400 F.3d 740, 742 (9th Cir. 2005); Hines v. Thompson,
 23 336 F.3d 848, 853 (9th Cir. 2003); Pirtle v. Morgan, 313 F.3d
 24 1160, 1167 (9th Cir. 2002).

25 **GROUND TWO:**

26 **THE BOARD FINDING OF UNSUITABILITY AND REFUSAL**
 27 **OF THE GRANTING OF PAROLE VIOLATED THE**
 28 **PETITIONER'S RIGHT TO DUE PROCESS AND DEPRIVED**

1 HIM OF HIS FEDERALLY PROTECTED LIBERTY INTEREST
 2 WHEN THE BOARD DENIED PETITIONER A PAROLE GRANT
 3 WITHOUT ANY RELIABLE EVIDENCE OR "SOME
 4 EVIDENCE," IN VIOLATION OF THE 5TH AND 14TH
 5 AMENDMENT OF THE UNITED STATES CONSTITUTION.

6 Section 3041 of the California Penal Code creates
 7 substantial presumption that a parole release date shall be set
 8 at the initial parole hearing, and in a manner that is uniform
 9 to other similar offenses. Subdivision (a) and (b), of §3041
 10 mandates that a parole release date "shall" be set "unless" the
 11 board finds that the gravity of the commitment offense or
 12 offenses, or the timing and gravity of past convicted offenses
 13 are such that a consideration of the public safety warrant not
 14 setting a release date at that hearing. "Furthermore, if there
 15 be any reasonable doubt as to identity of offense we are bound
 16 to resolve that doubt in favor of petitioner." (In re Bramble,
 17 1947, 31 Cal.2d 43, 51, [6], 187 P.2d 411). Moreover, the rule
 18 is established that when language which is reasonably
 19 susceptible of two constructions is used in a penal law,
 20 ordinarily that construction which is more favorable to the
 21 offender will be adopted. The defendant is entitled to the
 22 benefit of every reasonable doubt, whether it arises out of a
 23 question of fact, or as to the true interpretation of words or
 24 the construction of language used in a statute. (People v.
 25 Stuart, (1956), 47 Cal.2d 167, 175, [7], 302 P.2d 5, 55 A.L.R.2d
 26 705; People v. Smith, (1955) 44 Cal.2d 77, 79 [2], 279 P.2d 33;
 27 In re Bramble, (1947) supra, 31 Cal.2d 43, 51 [6,7], 187 P.2d
 28 441; In re McVickers, (1946) 29 Cal.2d 264, 278, 176 P.2d 40;
 People v. Valentine, (1946) 28 Cal.2d 121, 143 [20], 159 P.2d 1;
 People v. Ralph, (1944), 24 Cal.2d 575, 581 [2], 150 P.2d 401).

1 There is no other criteria in the statute for denying parole to
2 a prisoner. It appears from the language that "consideration of
3 the public safety" is nonetheless limited to the gravity of the
4 offense and/or the timing and gravity of any past "convicted"
5 offense or offenses. The statute does not encompass or authorize
6 some of the criteria set forth by the California Code of
7 Regulations, Title 15, §2402. It does appear that the statute
8 has been enlarged to include additional criteria not expressly
9 authorized by the statute.

10 Notwithstanding, the argument set forth in the petition is
11 not merely an argument about a state law violation. The
12 presumption vested by the statue is substantial, while the
13 statutory criteria the board must meet in order to deny parole
14 is limited to criminal conduct at the time of the offense. For
15 the board to interpret the statute in such a manner as to deny
16 parole solely on the commitment offense after the board had
17 denied petitioner on the exact same point three times, deprives
18 petitioner of a substantial liberty interest protected by
19 federal due process. (See Biggs at 334 F.3d 917). The effect of
20 such an interpretation, established by practice, is to subject
21 all prisoners to pro forma decisions, where the board goes
22 through the motion of due processs review, citing post hoc
23 rationalizations to justify the parole denial, that is now
24 always the result. This is little different than a decision to
25 deny parole made without any evidence to support it. Thus, by
26 misinterpretation, whether inadvertently or intentionally, the
27 result is not merely a violation because it is an action the
28 board is simply not authorized to take by the enabling statute

1 that impinges on federally protected liberty interests.
2 Petitioner relies on this claim which is now brought before the
3 state court.

4 A. THE BOARD DID NOT MEET THE BURDEN OF PROOF THAT
5 PETITIONER POSES AN "UNREASONABLE RISK" OF
6 THREAT TO PUBLIC SAFETY IF RELEASED ON PAROLE.
7 THE DECISION WAS WITHOUT EVIDENCE AND WAS
8 ARBITRARY AND CAPRICIOUS, VIOLATING FUNDAMENTAL
9 DUE PROCESS.

10 The regulatory law requires the board to set a release date
11 unless it finds that the prisoner poses an "unreasonable risk"
12 to public safety if released at that time. (15 CCR, §2402). This
13 is consistent with the enabling state which requires the setting
14 of a release date.

15 If the preponderate record before the board demonstrates
16 that petitioner does not post the "unreasonable risk" (which the
17 record shows that he does not, from petitioner's last 3 parole
18 hearings), a release date must be set.

19 If the board denies petitioner parole without making this
20 requisite finding based on relevant and credible facts in the
21 record, then this is not merely a state law violation, but a
22 deprivation of the substantial liberty interest he has in
23 obtaining a release date. Failure of the board to act in accord
24 with the regulations, in such situations, constitutes a
25 substantive due process violation because it constitutes an
abuse of discretion that unfairly and inaccurately deprives the
prisoner of his right to that federally protected liberty
interest. The board needs more than "some evidence" to arrive at
their decision, even though once the decision is made, the
reviewing court needs only to find "some evidence" to support

1 the decision or findings that were made. As petitioner will
2 point out, the "some evidence" standard is not a "burden of
3 proof" - although the board and the governor seems to think it
4 is. Petitioner will demonstrate by clear and convincing facts
5 that the board's burden of proof is the "preponderance of
6 evidence" standard, but they totally ignore this in arriving at
7 their post hoc rationalization to deny parole in nearly every
8 case. There must be a weighing and balancing process according
9 to a burden of proof.

10 Thus, petitioner alleges that the board's decision in his
11 case exceeded the bounds of "review" and was made without the
12 procedural safeguards required by the Constitution, and without
13 applying the proper proof necessary to overcome the presumptive
14 right to release delineated in Penal Code §3041.

15 Statutory law in California applies the "rock bottom"
16 burden of proof in judicatory proceedings at the "preponderance
17 of evidence" level. (Evidence Code §115). The board lists under
18 "good cause," the preponderance evidence (15 CCR, Division 2,
19 §2001(b)(49), and also lists "relevant" and "material" evidence
20 as the standard for being valid "evidence." (15 CCR, Div. 2,
21 §2000(b)(62)(material evidence), and (90)(relevant evidence).
22 The "good cause" provision is a requirement for decision making
23 that applise to all substantive decisions. These regulatory and
24 statutory provisions initiate the weighing and balancing process
25 of evidence at parole hearings. A responsibility the board must
26 undertake. The board cannot apply the "some evidence" standard
27 because it is not a burden of proof. (In re Ramirez, (2001) 94
28 Cal.App.4th 549 at 564-565; Edwards v. Balisok, (1997) 520 U.S.

1 641, at 648). The "some evidence" applies only to questions of
2 evidentiary sufficiency as an "additional requirement of due
3 process, not substituted for other due process requirements."
4 (Ibid.) The "some evidence" standard is applied only by the
5 reviewing court to determine if the board's (governor's)
6 decision is supported by "some evidence," if the court finds the
7 board complied with all other requisite due process
8 requirements. If the board failed to apply a critical element in
9 the weighing and balancing of evidence, such as a burden of
10 proof, then the court cannot deny the petition because there
11 isn't "some evidence" in the record to support the decision.
12 (Scott I, supra, 119 Cal.App.4th at p.899, In re Elkins, supra,
13 144 Cal.App.4th at 489). As the Appellate Court in In re Caswell
14 92 Cal.App.4th 1017, 1029, pointed out, there is always some
15 evidence in the record of unsuitability of parole, which if
16 invoked, would subject every consideration of parole to an
17 arbitrary standard or political whim, but for a burden of proof,
18 and the burden of producing evidence, is clearly in California
19 law, e.g. People v. Dubon, 90 Cal.App.4th 949, 952, (2001), and
20 applies to all state agencies.

21 Here, where the statute presumes that a parole date "shall
22 normally" be set, the board must, in their weighing and
23 balancing of all relevant, material and reliable evidence,
24 present by a preponderance of that evidence, a "rational
25 connection" between the basic facts the board is asserting as
26 sufficient to deny parole, and the ultimate fact statutorily
27 presumed, i.e., that the prisoner is more than likely not
28 "suitable" for setting a parole release date.

1 Petitioner submits that the board and the governor have
2 broad discretion in parole matter, but the requirement of
3 procedural due process embodied in the California Constitution
4 places some limitations upon these discretionary powers.

5 As heretofore shown, the board's burden of proof is the
6 preponderance of relevant and material evidence standard. This
7 is the "rock bottom" standard allowed by California law.
8 (Evidence Code §115; see e.g. Charlton v. Federal Trade Comm.,
9 543 F.2d, 903-907, 908, (D.C. Cir. 1976)(speaking to this
10 standard as being "rock bottom" burden of proof). "Good Cause"
11 is defined in the BPT's regulations as "a finding by the board
12 based upon a preponderance of the (material and relevant)
13 evidence that there is a factual basis and good reason for the
14 decision made." (Ibid. 2000). Here, in petitioner's case, the
15 board, based on the "material and relevant" evidence found
16 petitioner unsuitable for parole on the basis of the commitment
17 offense which petitioner has been denied three times base
18 primarily on the same issues, i.e., unchanging factors. This is
19 a clear due process violation and especially where the relevant
20 and reliable evidence concerning public safety that was
21 presented at petitioner's subsequent parole consideration
22 hearings that show that petitioner does not pose an
23 "unreasonable risk to the public if released at this time.

24 The mandatory language in §3041 of the Penal Code
25 established a rebuttable presumption affecting the board's
26 burden of producing evidence and the burden of proof
27 implementing public policy regarding the parole of "term to
28 life" prisoners.

1 Petitioner asserts that the ultimate facts sought is a
 2 determination whether the prisoner is currently in "unreasonable
 3 risk" of danger to the public safety if released on parole.
 4 (Subd. (b), Penal code §3041; 15 CCR. §2402(a)).

5 The presumption created by mandatory language in both
 6 subdivision (a) and (b) of P.C. §3041 is that the petitioner
 7 "shall normally" have a parole release date set "unless" the
 8 presumption is overcome by the board which carries the burden of
 9 proof as to the existence of the presumed fact. McQuillion v.
 10 Duncan, 306 F.3d, 901-902, (9th Cir. 2002); Biggs v. Terhune,
 11 334 F.3d 910, 916-917 (9th Cir. 2003)(regarding the presumption
 12 in Penal Code §3041). If the board cannot produce the evidence
 13 according to the burden of proof required, then the presumption
 14 stands, and the court is obliged to uphold the presumption, and
 15 under In re Smith, 109 Cal.App.4th 489 (2003), must order
 16 petitioner released from custody.

17 B. THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT
 18 PROHIBITS STATE ACTION THAT DEPRIVES A PERSON
 19 OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE
 20 PROCESS OF LAW.

21 The due process clause of the 14th Amendment prohibits
 22 state action that deprives a person of life, liberty, or
 23 property, without due process of law. A person alleging a due
 24 process violation must first demonstrate that he or she was
 25 deprived of liberty or property interest protected by the due
 26 process clause, and then show that the procedures that led to
 27 the deprivation were constitutionally insufficient. Kentucky
Dept. of Corrections v. Thompson, 490 U.S. 454, 459-460 (1989);
 28 McQuillion v. Duncan, 306 F.3d, 895, 900 (9th Cir. 2002).

1 In the parole context, a prisoner alleging a due process
2 claim must demonstrate the existence of a protected liberty
3 interest in parole, and the denial of one or more of the
4 procedural protections that must be afforded when a prisoner has
5 a liberty interest in parole. The Supreme Court held in 1979,
6 and reiterated in 1987, that "a state's statutory scheme, if it
7 uses mandatory language, creates a presumption that parole
8 release will be granted when or unless certain designated
9 findings are made, and thereby gives rise to a constitutional
10 liberty interest." McQuillion, supra, 306 F.3d, 16, 901 (citing
11 Greenholtz v. Inmates of Nebraska Penal, 442 U.S. 1, 7 (1979)
12 and Board of Pardon v. Allen, 482 U.S. 369, 373 (1987).

13 The Ninth Circuit has held that California's parole scheme
14 creates a cognizable liberty interest in release on parole
15 because Penal Code §3041 uses mandatory language and is similar
16 to the Nebraska and Montana statutes addressed in Greenholtz and
17 Allen, respectively. McQuillion, 306 F.3d 15, 901-902. As the
18 Ninth Circuit has explained, "§3041 of the California Penal Code
19 creates in every inmate a cognizable interest in parole which is
20 protected by the procedural safeguards of the due process
21 clause," and that interest arises "upon the incarceration of the
22 inmate." Biggs v. Terhune, 334 F.3d 910, 914-915 (9th Cir.
23 2003).

24 **GROUND THREE:**

25 THE BOARD VIOLATES DUE PROCESS BY REPEATEDLY
26 RELYING ON THE UNCHANGING FACTS OF THE CRIME IN
27 THE FACE OF CLEAR EVIDENCE OF REHABILITATION
28 AND BY MAKING RECOMMENDATIONS OF WHAT TO DO TO
BE FOUND SUITABLE AT EACH HEARING. A FINDING OF
EGREGIOUSNESS IS BARRED BY THE INMATE'S
COMPLIANCE WITH THOSE AGREED TERMS.

When the board repeatedly relies on the unchanging facts of the crime to deny parole, in the face of clear evidence that the inmate has been rehabilitated, due process is violated. Biggs v. Terhune, supra, at 915-916, Ramirez, supra, at 571). However, here, the board goes a step further. At the conclusion of each hearing attended by petitioner, the board gave him a series of what to do to be found suitable for parole. If the crime was going to continue to be an impediment to parole, then what difference would it make whether petitioner followed those recommendations, since parole would be denied in any event as the crime will never change? How could the board make those recommendations in good faith if the crime was such that parole was not going to occur no matter how well petitioner programs? Even worse, if he complies with those recommendations and the board gives him a parole date, if the governor is permitted to effectively negate this whole process unilaterally taking that parole date away, then the recommendations and compliances are rendered useless acts.

The board has a duty to make all recommendations "sufficiently clear" to inform petitioner what conduct will result in a grant of parole. (U.S. v. Guagliardo, 278 F.3d 868-872, (9th Cir. 2002)[citing Graynet v. City of Rockford, 408 U.S. 104, 108-109, (1972)]. "A prisoner's due process rights are violated if parole conditions are not made 'sufficiently clear' so as to inform him of what conduct will result in his being returned to prison. Likewise, the Board of Prison Terms has a duty to make recommendations for parole eligibility 'sufficiently clear' so as to inform the inmate of conduct that

1 will warrant a finding of suitability." U.S. v. Guagliardo,
2 supra, 278 F.3d 868. Thus, the onus is on the board to clearly
3 and specifically state what conduct will warrant a finding of
4 suitability. Therefore, it follows that there is only one way to
5 interpret the recommendations given to petitioner at the
6 Documentation hearing and at each of the Subsequent parole
7 hearings. They constitute the board's "sufficiently clear"
8 instructions as to what petitioner must do to be found suitable.
9 As stated, it is indisputable but that petitioner has complied
10 with every single one of the board's directives to him, and
11 thus, the board must finally find petitioner suitable for
12 release. If the board's directions to the inmate are not
13 acknowledged as sincere offers providing legitimate goals for
14 achieving a status of parole suitability, then they are mere
15 "hoops" designated to support elaborate ruse and a further
16 affront to the due process rights of all prisoners who rely upon
17 them.

18 As noted, petitioner sincerely relied upon the
19 recommendations of the prior board panels, and he partook to
20 fulfill each one. Petitioner's fulfillment may be recognized
21 through his educational and vocational accomplishments and
22 gains, his ongoing self-help work and his crime free behavior
23 throughout his nearly 17 years of incarceration. Petitioner has
24 complied with those directives following each and every hearing,
25 and the board should finally recognize his compliance by
26 granting parole.

27 A. CONTINUED RELIANCE ON THE UNCHANGING FACTS OF THE
28 CRIME VIOLATES DUE PROCESS.

1 In Biggs v. Terhune, the 9th Circuit held that even if the
 2 commitment offense(s) are sufficient to support a denial of
 3 parole based upon considerations of due process. Biggs v.
 4 Terhune, supra, 334 F.3d at 916. The Ramirez court also
 5 acknowledged that there will always be "some evidence" to
 6 support a finding that a prisoner committed the underlying
 7 offense. Those facts alone, however, do not justify the denial
 8 of parole. Thus, while concluding that there was factual support
 9 for the findings as to the crime and priors, the Ramirez, court
 10 still found the board's decision arbitrary since there had been
 11 7 hearings at that point, 9 years had passed beyond the minimum
 12 term and it was 17 years after entering prison, and all evidence
 13 showed rehabilitation. (Id. at 571). Likewise, as the Biggs court
 14 more recently said, despite the fact that there may remain
 15 evidence to support a finding of egregiousness of the crime:

16 "A continued reliance in the future on an
 17 unchanging factor, the circumstances of the
 18 offense and conduct prior to imprisonment,
 19 runs contrary to the rehabilitative goals
 espoused by the prison system and could result
 in a due process violation." (Biggs, supra, at
 916-917).

20 In the published case of Irons v. Warden, 358 F.Supp.2d 936
 21 (E.D. Cal. 2005), the federal court found that the board
 22 violated the prisoner's due process by continuing to rely on the
 23 immutable factors. (e.g. the commitment offense and history
 24 prior to incarceration) to support the denial of parole. In
 25 doing so, the federal judge there ruled that continuing to rely
 26 on those factors that can never change, such as the commitment
 27 offense, or history prior to imprisonment, where there is no
 28 proof of continuing bad conduct to support a finding of current

1 threat to the public, offends due process.

2 In interpreting the rule set forth in Biggs, and the plain
3 language of Penal Code §3041, it is clear that even if the crime
4 may be considered egregious, under federal due process
5 principles, the denial of parole based on the immutable facts of
6 the crime is only authorized at the first parole consideration
7 hearing. The provisions of Penal Code §3041 only talk of the use
8 of the crime to defer setting of a date at the initial hearing.
9 (Penal Code §3041(a)). After that, to give the statute a
10 constitutional interpretation that is not unreasonably vague,
11 further denials would have to be based on some facts arising
12 subsequent to the crime that show a continued propensity for
13 violence, making the inmate a danger to the public. (Biggs v.
14 Terhune, supra, 334 F.3d at 914-915). To rule otherwise would
15 put petitioner in an impossible situation, where no matter what
16 he shows in terms of positive behavior, reformation,, self-help,
17 work skills, parole plans, or just rehabilitation in general, he
18 would never be able to overcome the unchanging facts of the
19 crime. The only logical application of Constitutionaly Due
20 Process dictates what the court in Irons held, i.e., that any
21 subsequent denial requires the presence of some in-prison
22 behavior showing that the inmate currently presents an
23 unreasonable risk of danger if paroled.

24 Here, the facts of the crime have been used as the real
25 reason for denying parole on 3 separate occasions, yet, those
26 facts have never been tied to current behaviors showing
27 petitioner still presents an unreasonable risk of danger to the
28 public at this time. A rule requiring the presence of in-prison,

1 adverse behavior to justify further denial based on the crime,
2 simply recognizes what the 9th Circuit in Biggs alluded to when
3 it talked of the rehabilitative goals of the system, and, the
4 need to take into consideration that a person can change. At
5 this point, petitioner has been incarcerated for 17 years,
6 eligible for parole for more than six of those years. His
7 programming clearly shows his full rehabilitation. In drawing
8 the line as to when further denials become arbitrary, it is
9 obvious that the line has clearly been crossed in this case, and
10 in fact, was crossed as soon as the crime was used in the second
11 parole hearing without the presence of facts showing a continued
12 risk of danger based on how petitioner was programming in
13 prison. To the contrary, the in-prison facts are exclusively
14 positive.

15 As the Ramirez court noted, the paroling authority must do
16 more than merely commend petitioner for the hard work done to
17 rehabilitate himself while in prison. They must actually
18 consider these factors "as...circumstance[s] tending to show his
19 suitability for parole." Ramirez, supra, 94 Cal.App.4th at
20 571-572 [emphasis original]. Of course, all the board did with
21 petitioner's extensive accomplishments was to brush them aside
22 with several terse lines, and issue superficial compliments. The
23 Biggs rule is clear that if an inmate continue[s] to demonstrate
24 exemplary behavior and evidence of rehabilitation, denying him a
25 parole date simply because of the nature of his offense and
26 prior conduct would raise serious questions involving his
27 liberty interest in parole. Biggs v. Terhune, supra, 334 F.3d at
28 916. Here, the evidence of rehabilitation is beyond dispute.

1 In comparing the present case with Biggs, it is undeniably
2 clear that the board lacks any justification whatsoever to
3 continue to deny petitioner a parole date. In Biggs, the inmate
4 was convicted of the premeditated and deliberate First Degree
5 Murder of a witness in a major theft case against the
6 defendants, and yet, the court was quick to caution the board
7 that it could not continue to solely rely on the commitment
8 offense to deny the inmate parole, even though it was only his
9 initial hearing at that point. Yet, petitioner has been denied
10 parole on 3 separate occasions, each time effectively relying
11 virtually exclusively upon the unchanging facts of his
12 commitment offense. The continued reliance upon the commitment
13 offense is simply arbitrary, particularly in the fact of the
14 board's acknowledgements of petitioner's model behavior in
15 prison and extensive accomplishments, all of which are conceded
16 by the statement of decision. Therefore, as the court states in
17 Biggs, denying him a parole date simply because of the nature of
18 the offense, not only raises serious questions involving his
19 liberty interest in parole, but blatantly violates due process.
20 (See Biggs v. Terhune, supra, 334 F.3d at 915-916; Irons,
21 supra).

22 B. CONTINUED RELIANCE UPON FACTS OF THE CRIME VIOLATES
23 DUE PROCESS.

24 First, continued reliance upon these unchanging factors
25 makes a sham of California's parole system and amounts to an
26 arbitrary denial of petitioner's "liberty interest in release on
27 parole," and his "presumption that a parole release date will be
28 granted." (See McQuillion v. Duncan, 306 F.3d 895, 902 (9th Cir.
2002), Biggs, 334 F.3d at 9144-915, Rosenkrantz, 29 Cal.4th at

1 654, 661). Petitioner has been denied parole on 3 different
2 occasions. continued reliance upon these unchanging factors
3 amounts to converting petitioner's offense to a term of life
4 without the possibility of parole. (See Irons, 358 F.Supp.2d at
5 947 ["continuous reliance on the unchanging circumstances
6 transforms an offense into a de facto life imprisonment without
7 the possibility of parole"]; Scott, 34 Cal.Rptr.3d at 919-920,
8 133 Cal.App.4th at 594-595; Shaputis, 37 Cal.Rptr.3d at 335).
9 Second, the circumstances of the crime and petitioner's conduct
10 prior to imprisonment do not amount to some evidence supporting
11 the conclusion that petitioner "currently" (underline added)
12 poses an unreasonable risk of danger if released at this time."]
13 In re Shaputis, (2006) 37 Cal.Rptr.3d 324, 334-335). In the
14 parole context, the requirements of due process can only be met
15 if "some evidence" supports the decision and the evidence
16 underlying the decision is supported by "some indicia of
17 reliability." Biggs, 334 F.3d at 914; Caswell v. Calderon, 353
18 F.3d 832, 839 (9th Cir. 2004); Scott, 119 Cal.4th at 899;
19 Superintendent v. Hill, 472 U.S. 445, 455-457 (1985);
20 McQuillion v. Duncan, 306 F.3d 895, 903 (9th Cir. 2002).

21 Petitioner presents a stronger case than Biggs for several
22 reasons. First petitioner's commitment offense was less serious
23 than the petitioner in Biggs. The Biggs petitioner was involved
24 in a violent, manipulative and premeditated murder, the
25 petitioner here has a much lesser serious offense than
26 petitioner Biggs. Second, the Biggs petitioner had not yet
27 served the full terms of his sentence, while petitioner here has
28 exceeded his sentence by approximately three years. Finally,

1 petitioner here has demonstrated exemplary behavior and evidence
 2 of rehabilitation; as required by Biggs court, for a significant
 3 period of time. Therefore, the sole reliance on petitioner's
 4 commitment offense in denying him parole impinges on
 5 petitioner's constitutional liberty interest in parole. (Martin
 6 v. Marshall, supra, 431 F.Supp.2d at p.1047). (In re Lawrence,
 7 (May 22, 2007), Cal.Rptr.3d WL1475283 (Cal.App.2d Dist.).

8 While it may have been reasonable to rely on petitioner's
 9 offense and conduct prior to imprisonment as an indicator of
 10 dangerousness for some period of time, continued reliance on
 11 such unchanging circumstances after 17 years of incarceration
 12 and three parole suitability hearings, violates due process
 13 because these factors now lack predictive value with regards to
 14 petitioner's present and future dangerousness. After 17 years
 15 of rehabilitation in which petitioner's eligible parole date for
 16 release was passed on May 6, 2000 , (Exhibit "D" , Initial
 17 M.E.P.D.), the ability to predict petitioner's future
 18 dangerousness based simply on the circumstances of the crime is
 19 nil. (See Irons, 358 F.Supp.2d at 947 n.2 ["four prior times in
 20 finding [Irons] unsuitable for parole" and "after 15 years" of
 21 imprisonment, ability to assess dangerousness "is near zero."];
 22 Scott, 133 Cal.App.4th at 595, 34 Cal.Rptr.3d at 919-920 ["the
 23 predictive value of the commitment offense may be very
 24 questionable after a long period of time."].

25 Petitioner's record is replete with evidence of
 26 petitioner's rehabilitation, which was expressed by the board,
 27 including Psychological Reports, Correctional Counselor's
 28 Reports, extensive self-improvement through vocational,

1 educational, self-help therapy and disciplinary free
 2 incarceration for the past 3 years. (See Exhibit "D").

3 While the board may initially have been entitled to rely
 4 upon the commitment offense and petitioner's conduct prior to
 5 imprisonment to find petitioner unsuitable for parole, under
 6 these circumstances, petitioner submits that the continued
 7 reliance and sole reliance of the convicted offense do not now
 8 constitute "some evidence" with "some indicia of reliability" of
 9 petitioner's current dangerousness. (See Hill, 472 U.S. at 445;
 10 Biggs, 334 F.3d at 917; Irons, 358 F.Supp.2d at 947; Masoner,
 11 2004 WL1090188 *1-2; Bair, 2005 WL2219220, *12 n.3; Scott, 133
 12 Cal.App.4th at 594-595, 34 Cal.Rptr.3d at 919-920; Rosenkrantz,
 13 2002 29 Cal.4th 616, 665; Dannenberg, (2005) 34 Cal.4th 1061,
 14 1100; In re Lee, (2006) 143 Cal.App.4th 1400, 1408; In re
 15 Lawrence, (2007) Cal.Rptr.3d WL1475283; In re Barker, (2007)
 16 DJDAR 7548).

17 C. JUDICIAL OVERSIGHT IS CRITICAL TO SAFEGUARD THE
 18 UNDERLYING PURPOSE OF CALIFORNIA'S PAROLE SYSTEM
 19 AND THE LIBERTY INTERESTS OF INMATES. THE
 ESSENCE OF THE PAROLE SYSTEM IS THE RE-ENTRY OF
 PRISONERS WHO NO LONGER POSE A PUBLIC THREAT.

20 Parole, the release of the imprisoned before they have
 21 served the maximum time set by their sentence, has long been
 22 part of the California penal system. The Indeterminate
 23 Sentencing Law, requiring the trial judge to set a minimum but
 24 not a maximum sentence was enacted in 1971. In re Minnis, (1972)
 25 7 Cal.3d 639, 643, n.2 ("the court in imposing the sentence
 shall not fix the term or duration of the period of
 imprisonment")(citation and internal quotations omitted). The
 goal of indeterminate sentences and the California parole system

1 is not only to punish but also to provide for reformation and
2 rehabilitation:

3 "The belief no longer prevails that every
4 offense in a like legal category calls for an
5 identical punishment without regard to the
6 past life and habits of a particular offender
... retribution is no longer the dominant
7 objective of the criminal law. Reformation and
rehabilitation of offenders have become
important goals of criminal jurisprudence."

8 People v. Morse, (1964) 60 Cal.2d 631, 643, n.8 (quoting
9 Williams v. State of New York, (1949) 337 U.S. 241, 247). In a
lengthy discussion of this topic, the California Supreme Court
10 states as follows:

11 [T]he purpose of the indeterminate sentence
12 law, like other modern laws in relation to the
13 administration of the criminal law, is to
mitigate the punishment which would otherwise
14 be imposed upon the offender. These laws place
emphasis upon the reformation of the offender.
They seek to make the punishment fit the
15 criminal rather than the crime. The
endeavor to put before the prisoner great
incentive to well-doing, in order that his
16 will to do well would be strengthened and
confirmed by the habit of well-doing.

17 [...]

18 [T]he interests of society require that under
19 prison discipline every effort should be made
to produce a reformation of the prisoner ...
20 The Legislative policy [was to provide a
system whereby] a hope was to be held out to
21 prisoners that through good conduct in prison
and a disposition shown toward reformation,
they might be permitted a conditional liberty
22 upon restraint under which they might be
restored again to society...

23 [...]

24 Although good conduct while incarcerated and
potential for reform are not the only relevant
25 factors, the court has acknowledged their
significance. Furthermore, authority has
26 declared that these factors are among those of
27 "paramount importance."

28 In re Minnis, Cal.3d at 644-645. The Rosenkrantz court, citing

1 Minnis, reaffirmed the principles. "[E]ven before factors
 2 relevant to parole decisions had been set forth expressly by
 3 state statute and by regulations, we concluded that [a]ny
 4 official or board with discretion, is under obligation to
 5 consider all relevant factors [citations], and the [official or
 6 board] cannot, consistently with its obligation, ignore post
 7 conviction factors unless directed to do so by Legislature." In
 8 re Rosenkrantz, (2002) 29 Cal.4th 515, 656 (quoting Minnis, 7
 9 Cal.3d at 645).

10 D. PRISONERS HAVE A CONSTITUTIONAL LIBERTY INTEREST
 IN PAROLE DECISIONS.

11 "[P]arole applicants in California have an expectation that
 12 they will granted parole unless the board finds, in the exercise
 13 of its discretion, that they are unsuitable for parole in light
 14 of the circumstances specified by statute and by regulation."
 15 Rosenkrantz, 29 Cal.4th at 659-61 (holding that the California
 16 Constitution, Article V, §8(b) and the California Penal Code
 17 §3041, "give rise to a protected liberty interest in that "a
 18 prisoner granted parole by the board has an expectation that the
 19 governor's decision to affirm, modify, or reverse, the board's
 20 determination will be based upon the same factors the board is
 21 required to consider," and that "liberty interest underlying a
 22 governor's parole review decision is protected by due process of
 23 law.").

24 Federal courts have also unequivically held that
 25 California's parole system gives rise to a liberty interest
 26 constitutionally protected by due process. (See Board of Pardons
 27 v. Allen, (1987) 482 U.S. 369, 376-78; Greenholtz v. Inmates of
 28 Neb. Penal & Correctional Complex, (1979) 442 U.S. 1, 11-12,

1 (holding a state's statutory parole scheme that uses mandatory
2 language may create a presumption that parole release will be
3 granted upon certain circumstances or findings, thus giving rise
4 to a constitutionally protected liberty interest); McQuillion v.
5 Duncan, (9th Cir. 2002) 306 F.3d 896, 902-903, n.1, 903 (holding
6 that because California's parole scheme uses mandatory language
7 and is largely parallel to the schemes found in Allen and
8 Greenholtz, that give rise to a protected liberty interest in
9 release on parole, "California's parole scheme gives rise to a
10 cognizable liberty interest in release on parole"). Biggs v.
11 Terhune, (9th Cir. 2003) 334 F.3d 910, 915-916.

12 E. STANDARD OF REVIEW REQUIRES AN EVIDENTIARY HEARING.

13 On habeas corpus, a petitioner is entitled to an
14 evidentiary hearing where the petitioner has established a
15 "colorable" claim for relief and where the petitioner has never
16 been accorded a state or federal hearing on his claim. Earp v.
17 Oronski, (9th Cir. 2003) 372 U.S. 293 (1963) and Keeney v.
18 Tamaya-Reyes, 504 U.S. 1, 5 (1992). In stating a "colorable"
19 claim, a petitioner is merely required to allege specific facts
20 which, if true, would entitle him to relief. (Ibid.). Granted,
21 under AEDPA, a federal court is not required to order a hearing
22 where petitioner failed to develop the facts in state court. In
23 such cases, the federal court accords a presumption of
24 correctness to the facts found by the state court and need not
25 hold an evidentiary hearing, unless those facts are rebutted by
26 clear and convincing evidence. On the other hand, no deference
27 is due where state had made an unreasonable determination of the
28 facts and where a state court makes evidentiary finding without

1 holding a hearing and giving petitioner an opportunity to
2 present evidence. Such findings clearly result in an
3 "unreasonable determination" of the facts. Taylor v. Maddox,
4 (9th Cir. 2004) 336 F.3d 992, 1001.

5 In summation, an evidentiary hearing is required under the
6 AEDPA and the Appellate court will remand for a hearing if the
7 District Court rules without granting one, "where petitioner
8 establishes a colorable claim for relief and has never been
9 accorded a state or federal hearing on his claim." Earp, supra,
10 at 1167.

11 Here, petitioner requests an evidentiary hearing at every
12 level of the state's habeas proceedings and each of the court's
13 to which he appealed who rule without granting him an evidentiary
14 hearing. As a result, (1) petitioner is entitled to an
15 evidentiary hearing in this court before the court can make any
16 credibility determination of the facts alleged in the petition
17 and supporting exhibits; (2) any contrived facts found by the
18 state court while denying a request for an evidentiary hearing
19 necessarily resulting from an "unreasonable determination" of
20 the facts and hence are not entitled to any presumption of
21 correctness. (Earp, supra, at 1167; Taylor, supra, at
22 1101) ["when state court's legal error infects the fact finding
23 process, thus resulting in factual determinations will be
24 unreasonable and no presumption of correctness can attach to
25 it"].

26

27

28

1 CONCLUSION

2 All criminal convictions represent the basest form of human
3 behavior. Our laws however, provide mechanisms by which even
4 some murderers are entitled to be paroled. The judiciary has an
5 obligation to faithfully execute those laws. The record
6 establishes that petitioner does not pose an unreasonable risk
7 to public safety. Any contrary conclusion lacks any evidentiary
8 support. As the record is void of any evidence to substantiate a
9 claim of "present danger" and allows only for a contrary
10 conclusion, it (justice) can only be served by an order from
11 this court directing an evidentiary hearing; and because there
12 is nothing which, either singly or in conjunction with other
13 evidence that could support any decision other than parole
14 suitable, the board's decision should be vacated; the petition
15 issued; the petitioner remanded back to the board with
16 directions to find petitioner suitable; set a parole release
17 date within 30 days; and/or petitioner ordered released. Only in
18 this way can the liberty interest petitioner continues to be
19 denied be restored.

20 ///

21 ///

22

23

24

25

26

27

28

PRAYER FOR RELIEF

Petitioner is without remedy save for Habeas Corpus.

3 Accordingly, petitioner requests that the court:

1. Issue a Writ of Habeas Corpus granting petitioner's Due Process violation claims;
 2. Issue an Order to Show Cause;
 3. Declare the rights of petitioner;
 4. Appoint counsel to represent petitioner;
 5. Issue an Order directing an Evidentiary Hearing;
 6. Issue an Order releasing petitioner based on supporting evidence;
 7. Grant any and all relief found necessary or appropriate.

Dated this 17th day of July , 2008.

respectfully submitted,

Charl Brown

Charles Brown

Petitioner in Pro Per

11

111

EXHIBIT “A”

BOARD OF PRISON TERMS

LIFE PRISONER: PAROLE CONSIDERATION PROPOSED DECISION:
DENY PAROLE

STATE OF CALIFORNIA

PAROLE DENIED FOR: 1 2 3 **4** 5 YEARS

Place the prisoner on the JUL/2010 calendar for his next subsequent hearing.

If this decision is final, you WILL NOT get paroled. The Board will send you a copy of the decision. It will indicate the reasons you did not get paroled. If this decision is not final, the Board will set up another hearing. You can read the laws about your hearing. You can find the laws at California Code of Regulations, Title 15, section 2041.

RECOMMENDATIONS**The Board Recommends:**

- | | |
|---|---|
| <input checked="" type="checkbox"/> No more 115's or 128A's | <input type="checkbox"/> Learn a trade* |
| <input type="checkbox"/> Work to reduce custody level | <input checked="" type="checkbox"/> Get therapy* |
| <input checked="" type="checkbox"/> Get self-help* | <input checked="" type="checkbox"/> Earn positive chronos |
| <input checked="" type="checkbox"/> Stay discipline free | <input type="checkbox"/> Get a GED* |

Recommend transfer to _____

Other _____

* These programs are recommended if they are offered at your prison and you are eligible/able to participate.

HEARING PANEL

Name M. Rollan Date ✓

Name A.R. Morris Date ✓

Name _____ Date ✓

NAME	CDC#	PRISON	DATE
------	------	--------	------

BROWN, CHARLES E2531

BPT 1005(b)
(REV 04/04)

Distribution: White-C File

Canary-BPT

Pink-Prisoner

SUBSEQUENT PAROLE CONSIDERATION HEARING
STATE OF CALIFORNIA
BOARD OF PRISON TERMS

In the matter of the Life)
Term Parole Consideration) CDC Number E-25371
Hearing of:)
)
CHARLES BROWN)
)
)

**INMATE
COPY**

CORRECTIONAL TRAINING FACILITY
SOLEDAD, CALIFORNIA

JULY 24, 2006

PANEL PRESENT:

MICHAEL PORTER, Presiding Commissioner
RUFUS MORRIS, Deputy Commissioner

OTHERS PRESENT:

CHARLES BROWN, Inmate
CANDICE CHRISTENSEN, Attorney for Inmate

CORRECTIONS TO THE DECISION HAVE BEEN MADE

____ No See Review of Hearing
____ Yes Transcript Memorandum

Myra Severtson, Northern California Court Reporters

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1 **P R O C E E D I N G S**

2 **DEPUTY COMMISSIONER MORRIS:** We're on record.

3 **PRESIDING COMMISSIONER PORTER:** This is a
4 subsequent parole consideration hearing for Mr. Charles
5 Brown, CDC number E as in Edward, 25371. Today's date is
6 7/24/2006. We're located at the Correctional Training
7 Facility in Soledad. The inmate was received on 8/08/89
8 in Placer County. The life term began on 12/08/89 and
9 the minimum eligible parole date is 5/06/2000. The
10 controlling offense for which the inmate had been
11 committed is murder second-degree case number 1251 count
12 one Penal Code Section 187. The inmate received a term
13 of 15 years to life plus two with a minimum eligible
14 parole date of 5/06/2000. This hearing is being tape-
15 recorded and for the purpose of voice identification each
16 of us will say our first and last name and spell our last
17 name. When it comes to you Mr. Brown, please give us
18 your CDC number after you spell your last name. I'll
19 start with myself and go to my left, Michael Porter, P-O-
20 R-T-E-R, Commissioner.

21 **DEPUTY COMMISSIONER MORRIS:** Rufus Morris, M-O-R-
22 R-I-S, Deputy Commissioner.

23 **ATTORNEY CHRISTENSEN:** Candice Christensen, C-H-R-
24 I-S-T-E-N-S-E-N, attorney for Mr. Brown.

25 **INMATE BROWN:** Charles Brown, B-R-O-W-N, E-25371.

26 **PRESIDING COMMISSIONER PORTER:** Okay, Mr. Brown.

27 Before we begin can you please read that ADA statement

1 out loud.

2 **INMATE BROWN:**

3 "The Americans With Disability Act is a
4 law to help people with disabilities.
5 Disabilities are problems that make it
6 hard for some people to see, hear,
7 breathe, talk, walk, learn, think, work
8 or take care of themselves than it is for
9 others. Nobody can be kept out of public
10 places or activities because of a
11 disability. If you have a disability you
12 have the right to ask for help to get
13 ready for your BPT hearing, get to the
14 hearing, talk, read forms and papers, and
15 understand the hearing process. BPT will
16 look at what you have asked for to make
17 sure that you have a disability that is
18 covered by the ADA, and that you have
19 asked for the right kind of help. If you
20 do not get help, or if you don't think
21 you got the kind of help you need, ask
22 for a BPT 1074 grievance form. You can
23 also get help filling it out."

24 **PRESIDING COMMISSIONER PORTER:** Thank you sir.

25 The record reflects that you signed a BPT 1073 form on
26 12/2005 indicating that you do not have a disability as
27 defined under the Americans With Disabilities Act. Is

1 that true?

2 **INMATE BROWN:** That's true.

3 **PRESIDING COMMISSIONER PORTER:** Is that
4 information still correct?

5 **INMATE BROWN:** That is still correct.

6 **PRESIDING COMMISSIONER PORTER:** Okay. Did you
7 have any problem walking up the stairs getting here?

8 **INMATE BROWN:** No.

9 **PRESIDING COMMISSIONER PORTER:** Okay. And do you
10 have any problems seeing? I see you've got glasses on--

11 **INMATE BROWN:** No.

12 **PRESIDING COMMISSIONER PORTER:** -- and glasses are
13 for reading.

14 **INMATE BROWN:** No, I can see fine.

15 **PRESIDING COMMISSIONER PORTER:** Okay. Do you have
16 any type of hearing impairment?

17 **INMATE BROWN:** No, I don't.

18 **PRESIDING COMMISSIONER PORTER:** Okay. Have you
19 ever been included in the triple CMS or DOP programs?

20 **INMATE BROWN:** No, I haven't.

21 **PRESIDING COMMISSIONER PORTER:** Do you know what
22 those terms mean?

23 **INMATE BROWN:** Something to do with a psychiatric
24 (inaudible).

25 **PRESIDING COMMISSIONER PORTER:** (Inaudible) Have
26 you ever taken any kind of medication for mental health
27 either in prison or on the street?

1 **INMATE BROWN:** No, I haven't.

2 **PRESIDING COMMISSIONER PORTER:** Then finally, do
3 you suffer from any disability that will prevent you from
4 participating in today's hearing?

5 **INMATE BROWN:** No. I'm okay.

6 **PRESIDING COMMISSIONER PORTER:** Counsel are there
7 any ADA issues that you believe need further discussion
8 regarding your client's ability to fully participate in
9 today's hearing?

10 **ATTORNEY CHRISTENSEN:** No. He has prescription
11 glasses and (inaudible).

12 **PRESIDING COMMISSIONER PORTER:** Okay. Thank you.
13 This hearing is being conducted pursuant to the Penal
14 Code and the Rules and Regulations of the Board of Parole
15 Hearings governing parole consideration hearings for life
16 inmates. The purpose of today's hearing is to once again
17 consider your suitability for parole. In doing so we
18 will consider the number and nature of the crimes for
19 which you were committed, your prior criminal and social
20 history, your behavior and programming since your
21 commitment and your plans if released. We have had the
22 opportunity to review your central file and you will be
23 given the opportunity to correct or clarify the record.
24 We will consider your progress since your commitment and
25 your counselor's report and your mental health
26 evaluation. We will focus on your progress and any new
27 reports since our last hearing. Any change in parole

1 plans should be brought to our attention. We will reach
2 a decision today and inform you whether or not we find
3 you suitable for parole and the reasons for our decision.
4 If you are found suitable for parole the length of your
5 confinement will be explained to you. Before we recess
6 for deliberation the District Attorney's representative
7 -- stand by. Are we going to have a -- is this a
8 videoconference, or do we have a District Attorney at
9 all?

10 **DEPUTY COMMISSIONER..MORRIS:** I'll check for
11 (inaudible).

12 **PRESIDING COMMISSIONER PORTER:** Thank you, sir.
13 We're going to take a quick recess here.

14 **DEPUTY COMMISSIONER..MORRIS:** Yeah, we're off the
15 record.

16 [Off the record]

17 **DEPUTY COMMISSIONER..MORRIS:** Okay, we're back on
18 record.

19 **PRESIDING COMMISSIONER PORTER:** Okay. Before we
20 recess for deliberation your attorney and you will be
21 given the opportunity to make a final statement regarding
22 your parole suitability. Your statement shall be limited
23 to why you are suitable for parole. We will then recess,
24 clear the room and deliberate. Once we have completed
25 our deliberations we will resume the hearing and announce
26 our decision. The California Code of Regulations states
27 that regardless of time served a life inmate shall be

1 found unsuitable for and denied parole, if in the
2 judgment of the panel the inmate will pose an
3 unreasonable risk of danger to society if released from
4 prison. Mr. Brown, you have certain rights. Those
5 rights include the right to a timely notice of this
6 hearing, the right to review your central file and the
7 right to present any relevant documents. Counsel, have
8 all of your client's rights been met?

9 **ATTORNEY CHRISTENSEN:** Yes, they have.

10 **PRESIDING COMMISSIONER PORTER:** Okay. Mr. Brown
11 you have an additional right to be heard by an impartial
12 panel. We are your panel. Do you have any objection to
13 us?

14 **INMATE BROWN:** No.

15 **PRESIDING COMMISSIONER PORTER:** You will receive a
16 copy of our written tentative decision today. That
17 decision becomes final within 120 days. A copy of that
18 decision and a copy of the transcript will be sent to
19 you. On May 1st, 2004 the regulations regarding your
20 right to appeal a decision made at this hearing were
21 repealed. The current policy is entitled,
22 "Administrative Appeals, Correspondence and Grievances
23 Concerning Board of Prison Terms Decisions." Please
24 consult your attorney if you have any questions, or you
25 can review the policy in the prison law library. What
26 that basically states is that if you disagree with a
27 decision made at this panel today you can have a recourse

1 through the court of (inaudible). Mr. Brown, you are not
2 required to admit to or discuss your offense. However,
3 this panel does accept as true the findings of the court.
4 Do you understand that?

5 **INMATE BROWN:** I do.

6 **PRESIDING COMMISSIONER PORTER:** Deputy
7 Commissioner sir, are we using any confidential
8 information?

9 **DEPUTY COMMISSIONER MORRIS:** There are no
10 confidential materials in the C File (inaudible).

11 **PRESIDING COMMISSIONER PORTER:** I have got a
12 checklist marked Exhibit One given to the panel to make
13 sure we are all operating from the same documentation.
14 Sir, could you pass this around.

15 **ATTORNEY CHRISTENSEN:** (Inaudible)

16 **PRESIDING COMMISSIONER PORTER:** Okay. Counsel,
17 are there any additional documents that you will be
18 submitting?

19 **ATTORNEY CHRISTENSEN:** I have none.

20 **PRESIDING COMMISSIONER PORTER:** Counsel, do you
21 have any preliminary objections?

22 **ATTORNEY CHRISTENSEN:** I don't.

23 **PRESIDING COMMISSIONER PORTER:** And will your
24 client being addressing the panel today.

25 **ATTORNEY CHRISTENSEN:** (Inaudible)

26 **PRESIDING COMMISSIONER PORTER:** Okay. Mr. Brown
27 since you will be speaking with us today we need to swear

1 you in. Will you please raise your right hand? Do you
2 solemnly swear or affirm that the testimony you give at
3 this hearing will be the truth, the whole truth, and
4 nothing but the truth?

5 **INMATE BROWN:** Yes.

6 **PRESIDING COMMISSIONER PORTER:** Thank you, sir.
7 Okay, I'm going to read into the record or I'm going to
8 incorporate by reference the Statement of Facts from the
9 Board Report dated November 2004, if you have no
10 objections Counsel.

11 **ATTORNEY CHRISTENSEN:** I have no objections.

12 **PRESIDING COMMISSIONER PORTER:** And Mr. Brown on
13 4/23/88, that's the day of the commitment, can you please
14 tell me what happened (inaudible)?

15 **INMATE BROWN:** I went over to Michael Defew's
16 (phonetic) residence and got into a altercation. And it
17 ended up with him -- I shot Michael (inaudible).

18 **PRESIDING COMMISSIONER PORTER:** Okay. Could you
19 get in a little bit more detail for us? How did you come
20 to know Mr. Defew? State how'd you come to know him?

21 **INMATE BROWN:** I just know him from the
22 neighborhood.

23 **PRESIDING COMMISSIONER PORTER:** Okay. I'm sorry
24 (inaudible) for your microphone.

25 **INMATE BROWN:** Oh, I'm sorry. I had known Mike
26 for quite a few years, we were friends, I knew him for
27 five or six years.

1 **PRESIDING COMMISSIONER PORTER:** Okay. How old
2 were you at the time of the --

3 **INMATE BROWN:** I believe I was 35.

4 **PRESIDING COMMISSIONER PORTER:** Thirty-five. So
5 you had known him since you were about 30?

6 **INMATE BROWN:** Uh-huh, and his sister Patty.

7 (phonetic)

8 **PRESIDING COMMISSIONER PORTER:** Okay. And how'd
9 you find out he was over at Mr. Defew's house?

10 **INMATE BROWN:** I didn't know he was over there.

11 **PRESIDING COMMISSIONER PORTER:** Okay.

12 **INMATE BROWN:** (Inaudible) were waiting for me
13 when I come home.

14 **PRESIDING COMMISSIONER PORTER:** Oh, you were --

15 **INMATE BROWN:** We were already fighting. We
16 already had a little war going between us and --

17 **PRESIDING COMMISSIONER PORTER:** Okay.

18 **INMATE BROWN:** And I was over there earlier. And
19 (inaudible)...to get out.

20 **PRESIDING COMMISSIONER PORTER:** What was the war
21 about?

22 **INMATE BROWN:** Money.

23 **PRESIDING COMMISSIONER PORTER:** This is by you and
24 the victim, right?

25 **INMATE BROWN:** And his sister, yeah.

26 **PRESIDING COMMISSIONER PORTER:** And his sister?

27 **INMATE BROWN:** Over owed money.

1 **PRESIDING COMMISSIONER PORTER:** What do you mean?

2 He owed you money or --

3 **INMATE BROWN:** He owed me money.

4 **PRESIDING COMMISSIONER PORTER:** Okay. All right.

5 How'd he owe you money?

6 **INMATE BROWN:** He owed me money because I loaned
7 him money to pay the rent in (inaudible).

8 **PRESIDING COMMISSIONER PORTER:** How much money did
9 you loan him.

10 **INMATE BROWN:** Three hundred dollars. That's
11 where it all started. (Inaudible)

12 **PRESIDING COMMISSIONER PORTER:** So when was he
13 supposed to pay you back?

14 **INMATE BROWN:** Well, he was supposed to have
15 already paid me back before then. (Inaudible)

16 **PRESIDING COMMISSIONER PORTER:** (Inaudible) was it
17 like months or (inaudible)

18 **INMATE BROWN:** (Inaudible) almost a year.

19 **PRESIDING COMMISSIONER PORTER:** (Inaudible). So
20 what did you say to him?

21 **INMATE BROWN:** It wasn't really the issue on owing
22 the money, you know, just we got to fighting back and
23 forth. We got, we had gotten --

24 **PRESIDING COMMISSIONER PORTER:** Well, what did the
25 fighting start about? That's what I'm trying to get you
26 to --

27 **INMATE BROWN:** It was over the money, because the

1 money was what we started the fight over.

2 **PRESIDING COMMISSIONER PORTER:** Okay.

3 **INMATE BROWN:** We got into a fight earlier that
4 year. And he had gotten a (inaudible) shotgun shells.
5 (Inaudible).

6 **PRESIDING COMMISSIONER PORTER:** Um-hmm.

7 **INMATE BROWN:** And we had gotten in a fight before
8 that. And we was just going back and forth and then that
9 night it just happened to come to a head.

10 **PRESIDING COMMISSIONER PORTER:** So, when did you
11 ask him to pay you back the three hundred bucks?

12 **INMATE BROWN:** I had asked him several times.

13 **PRESIDING COMMISSIONER PORTER:** And what was his
14 response?

15 **INMATE BROWN:** You know, I really can't remember.

16 **PRESIDING COMMISSIONER PORTER:** Um-hmm.

17 **INMATE BROWN:** I mean I can't -- it's been so long
18 and a lot of it's foggy to me now.

19 **PRESIDING COMMISSIONER PORTER:** Um-hmm.

20 **INMATE BROWN:** Because I don't remember those
21 little parts, you know. I mean I remember the incident
22 going down and things like that. And part of that I
23 don't really remember anymore.

24 **PRESIDING COMMISSIONER PORTER:** Okay.

25 **INMATE BROWN:** I don't remember all the little
26 conversations and things back then because I was using
27 drugs too. And my prior recollection of (inaudible) is

1 foggy.

2 **PRESIDING COMMISSIONER PORTER:** Okay. So you got
3 to the place and he was already in the place --

4 **INMATE BROWN:** Right.

5 **PRESIDING COMMISSIONER PORTER:** -- the apartment.

6 **INMATE BROWN:** Right.

7 **PRESIDING COMMISSIONER PORTER:** -- and did you ask
8 for him once you got there?

9 **INMATE BROWN:** No, no I didn't. I didn't know he
10 was there. They said that in there, but I never knew he
11 was in there. I couldn't see him.

12 **PRESIDING COMMISSIONER PORTER:** (Inaudible) and
13 what police said is you got there and you started yelling
14 for him (inaudible).

15 **INMATE BROWN:** Well, you see the -- that was their
16 court story to say that they didn't know who that I was,
17 that I just came in and asked for him.

18 **PRESIDING COMMISSIONER PORTER:** Um-hmm.

19 **INMATE BROWN:** But then when they got down to
20 telling the story that they knew it was (inaudible), and
21 that they made up all them parts in there because I never
22 even knew he was in there in the back room.

23 **PRESIDING COMMISSIONER PORTER:** Okay. So you got
24 there and he --

25 **INMATE BROWN:** Because we were already fighting at
26 that time.

27 **PRESIDING COMMISSIONER PORTER:** Um-hmm.

1 **INMATE BROWN:** In fact the only reason I went in
2 the back room (inaudible) and he was standing around up
3 there.

4 **PRESIDING COMMISSIONER PORTER:** When you say
5 fighting what had you done to him and what had he done to
6 you?

7 **INMATE BROWN:** We had got into a fistfight down
8 near (inaudible) house and I beat him up.

9 **PRESIDING COMMISSIONER PORTER:** Okay. How did
10 that fight start?

11 **INMATE BROWN:** It started when I came in the
12 house.

13 **PRESIDING COMMISSIONER PORTER:** You just came in
14 the house and you guys just started --

15 **INMATE BROWN:** Came in and then we started
16 fighting, yeah. And then that's when he got pulled over
17 by the police that day with the shotgun --

18 **PRESIDING COMMISSIONER PORTER:** Um-hmm.

19 **INMATE BROWN:** -- that sawed-off shotgun in his
20 hands and (inaudible).

21 **PRESIDING COMMISSIONER PORTER:** Okay. So you're
22 in the apartment, you don't know he's there, so how'd you
23 guys --

24 **INMATE BROWN:** I walked in and he just pulled a
25 gun on me.

26 **PRESIDING COMMISSIONER PORTER:** So you walked in
27 and he pulled a gun on you?

1 **INMATE BROWN:** Yeah, I walk into the back room and
2 he pulled a gun on me, started to pull the gun on me.

3 **PRESIDING COMMISSIONER PORTER:** Oh, he had a gun
4 to you then?

5 **INMATE BROWN:** Yeah, at the time, a silver pistol.
6 I noticed it was a pistol with black handles.

7 **PRESIDING COMMISSIONER PORTER:** Okay. And what'd
8 you do after you saw him pull the gun on you.

9 **INMATE BROWN:** We got into it. I grabbed his arm,
10 and we started to fight.

11 **PRESIDING COMMISSIONER PORTER:** So you saw him
12 pulling it and before he got you (inaudible) --

13 **INMATE BROWN:** Right. (Inaudible) to him and got
14 a hold of his hand, and then we fought out into the front
15 room.

16 **PRESIDING COMMISSIONER PORTER:** Um-hmm.

17 **INMATE BROWN:** And that's when some of the other
18 people in the house got involved in it.

19 **PRESIDING COMMISSIONER PORTER:** Did you bring
20 anybody with you?

21 **INMATE BROWN:** Yeah, I did.

22 **PRESIDING COMMISSIONER PORTER:** Who was that?

23 **INMATE BROWN:** I don't know. I was just giving
24 him a ride.

25 **PRESIDING COMMISSIONER PORTER:** Okay.

26 **INMATE BROWN:** I never did know his name. I was
27 giving him a ride and I stopped over there because

1 (inaudible) told (inaudible) I was supposed to
2 (inaudible) friend of mine that was (inaudible). And
3 that was the main reason that I went over that day.

4 **PRESIDING COMMISSIONER PORTER:** Okay. So you're
5 wrestling with for him for the gun --

6 **INMATE BROWN:** Right.

7 **PRESIDING COMMISSIONER PORTER:** -- at some point
8 you overpowered him and took the gun?

9 **INMATE BROWN:** No, I pulled a gun out myself.

10 **PRESIDING COMMISSIONER PORTER:** Oh you had a gun.

11 **INMATE BROWN:** I had a gun and he had a gun.

12 **PRESIDING COMMISSIONER PORTER:** Okay, so and then
13 what? Both you guys have pulled your guns and are just
14 standing there?

15 **INMATE BROWN:** He had a gun and I had a gun and
16 what just happened before that, (inaudible).

17 **PRESIDING COMMISSIONER PORTER:** Okay.

18 **INMATE BROWN:** (Inaudible) and I started hitting
19 him with --

20 **PRESIDING COMMISSIONER PORTER:** Where'd the knife
21 come from?

22 **INMATE BROWN:** It was mine.

23 **PRESIDING COMMISSIONER PORTER:** Where'd you have
24 it?

25 **INMATE BROWN:** In between the (inaudible) and my
26 belt.

27 **PRESIDING COMMISSIONER PORTER:** All right so

1 (inaudible) --

2 **INMATE BROWN:** I didn't want to shoot him.

3 **PRESIDING COMMISSIONER PORTER:** Um-hmm.

4 **INMATE BROWN:** And I told him that as I pulled the
5 gun.

6 **PRESIDING COMMISSIONER PORTER:** Um-hmm.

7 **INMATE BROWN:** And I told him two or three times
8 as I pulled the gun. Then I started hitting him with my
9 pistol and he grabbed the gun barrel. And while we were
10 still fighting it went off, and the first shot hits the
11 window and the next one hit his head.

12 **PRESIDING COMMISSIONER PORTER:** So he's holding on
13 to it and you're stabbing him, and you're both
14 (inaudible) --

15 **INMATE BROWN:** No, I lost the knife by then. I
16 lost the knife during the fight; I got kicked in the face
17 during the fight.

18 **PRESIDING COMMISSIONER PORTER:** Did anybody else
19 jump in the fight or just you and him?

20 **INMATE BROWN:** Yeah, yeah there was other people
21 in the fight but --

22 **PRESIDING COMMISSIONER PORTER:** Who else jumped
23 in?

24 **INMATE BROWN:** Emile Hammond. (phonetic)

25 **PRESIDING COMMISSIONER PORTER:** Who did he jump in
26 to help, you or to help --

27 **INMATE BROWN:** No, to help him.

1 **PRESIDING COMMISSIONER PORTER:** To help him.

2 **INMATE BROWN:** Because they were all together in
3 the (inaudible).

4 **PRESIDING COMMISSIONER PORTER:** Okay.

5 **INMATE BROWN:** All I can say is just a lot of the
6 details are foggy to me now. I guess I could have read
7 about it before I came in, you know, the transcripts
8 but --

9 **PRESIDING COMMISSIONER PORTER:** Okay. And was
10 there something to the effect that you were saying that
11 he tried to blow your car up or --

12 **INMATE BROWN:** Yeah, there was a bomb (inaudible).

13 **PRESIDING COMMISSIONER PORTER:** What happened
14 there? How did he do that?

15 **INMATE BROWN:** He wired a bomb in my car. And the
16 D.A., it was in his opening statements (inaudible) bomb
17 dog and that he had planted it in my car. I had found
18 the bomb.

19 **PRESIDING COMMISSIONER PORTER:** How'd you find the
20 bomb?

21 **INMATE BROWN:** I was called and told where it was.
22 And then when I had (inaudible) it went off in the house.

23 **PRESIDING COMMISSIONER PORTER:** Um-hmm.

24 **INMATE BROWN:** And it blew up.

25 **PRESIDING COMMISSIONER PORTER:** Okay. Where was
26 the bomb located?

27 **INMATE BROWN:** Where was it located?

1 **PRESIDING COMMISSIONER PORTER:** Yeah, inside the
2 car?

3 **INMATE BROWN:** Well, it never got into the car.
4 It never got all the way in the car.

5 **PRESIDING COMMISSIONER PORTER:** Where was it?

6 **INMATE BROWN:** It was over at somebody's house.

7 **PRESIDING COMMISSIONER PORTER:** Okay.

8 **INMATE BROWN:** Yeah.

9 **PRESIDING COMMISSIONER PORTER:** And you went over
10 to somebody's house and picked it (inaudible) --

11 **INMATE BROWN:** (Inaudible) proceeded at
12 (inaudible) time to put it over at the -- (inaudible) be
13 on my property to do it. They had tried and then the
14 dogs had gotten a hold (inaudible).

15 **PRESIDING COMMISSIONER PORTER:** All right. Let's
16 go back a little bit, sir. You and him are -- go back to
17 the fight. So you're struggling over the gun. You tell
18 him to let go of the gun and the gun shoots off one time
19 and goes through the ceiling --

20 **INMATE BROWN:** Hits the window and hits the door
21 jam -- window jam.

22 **PRESIDING COMMISSIONER PORTER:** Okay. And then
23 the next round hits him in the head and (inaudible) him.

24 **INMATE BROWN:** (Inaudible)

25 **PRESIDING COMMISSIONER PORTER:** How did that
26 happen?

27 **INMATE BROWN:** I had the gun and we were just

1 struggling over it. The gun was like this and it went
2 off and clipped him in the back of the head.

3 **PRESIDING COMMISSIONER PORTER:** And then what'd
4 you do?

5 **INMATE BROWN:** I got up and run.

6 **PRESIDING COMMISSIONER PORTER:** Did you make any
7 comments when you left?

8 **INMATE BROWN:** No, I didn't say (inaudible). Me
9 and Mike were friends. And I won't ever; whatever I'm
10 saying (inaudible) put the blame on them. I'm not trying
11 to do that.

12 **PRESIDING COMMISSIONER PORTER:** Okay. I'm just
13 getting your version of the story.

14 **INMATE BROWN:** All right.

15 **PRESIDING COMMISSIONER PORTER:** Okay, good. And
16 then before that -- how many days before that had you
17 discovered the bomb?

18 **INMATE BROWN:** The bomb was months before that.

19 **PRESIDING COMMISSIONER PORTER:** Oh, so you
20 hadn't --

21 **INMATE BROWN:** I already had fought with him over
22 the bomb (inaudible). We'd already had that fight over
23 all of that. And then the shotgun and all them issues
24 were, you know, that was months before that.

25 **PRESIDING COMMISSIONER PORTER:** Okay, so you guys
26 had several fights (inaudible).

27 **INMATE BROWN:** Yeah, yeah.

1 **PRESIDING COMMISSIONER PORTER:** And at some point
2 you (inaudible) got a restraining order against him,
3 'This guy just tried to blow me up.' (inaudible).

4 **INMATE BROWN:** No, I never thought of that.

5 **PRESIDING COMMISSIONER PORTER:** All right,
6 anything else about the story that you just want to add
7 that we didn't cover?

8 **INMATE BROWN:** No. (Inaudible)

9 **PRESIDING COMMISSIONER PORTER:** All right let's
10 talk about some of your pre-conviction factors, your
11 juvenile record. How many times were you arrested as a
12 juvenile?

13 **INMATE BROWN:** When I was 10 or 12.

14 **PRESIDING COMMISSIONER PORTER:** It looks like
15 twice, once in '68 and once in '69. In '68 you took a
16 (inaudible) the owner's consent and then were arrested
17 for (inaudible). What happened there?

18 **INMATE BROWN:** I don't --

19 **PRESIDING COMMISSIONER PORTER:** You don't
20 remember?

21 **INMATE BROWN:** Well, I remember being arrested for
22 stealing a car.

23 **PRESIDING COMMISSIONER PORTER:** How old were you
24 in '68?

25 **INMATE BROWN:** About 16 I think.

26 **PRESIDING COMMISSIONER PORTER:** Sixteen.

27 **INMATE BROWN:** (Inaudible)

1 **PRESIDING COMMISSIONER PORTER:** And you had
2 another arrest in '69. (Inaudible). Do you remember
3 that case?

4 **INMATE BROWN:** I just remember I was stealing cars
5 when I was a kid. (Inaudible) I do remember that.

6 **PRESIDING COMMISSIONER PORTER:** Why were you
7 stealing cars?

8 **INMATE BROWN:** I was joyriding.

9 **PRESIDING COMMISSIONER PORTER:** Did you try to
10 sell them?

11 **INMATE BROWN:** No.

12 **PRESIDING COMMISSIONER PORTER:** Did you steal
13 anything from them?

14 **INMATE BROWN:** No.

15 **PRESIDING COMMISSIONER PORTER:** Radio and all that
16 stuff?

17 **INMATE BROWN:** No, just (inaudible) driving around
18 in them.

19 **PRESIDING COMMISSIONER PORTER:** Where'd you go
20 with them?

21 **INMATE BROWN:** Just (inaudible) you know, what
22 kids do.

23 **PRESIDING COMMISSIONER PORTER:** How long did you
24 have it before you ditched it?

25 **INMATE BROWN:** I don't know. Well, I got caught
26 with them so probably a couple of weeks.

27 **PRESIDING COMMISSIONER PORTER:** All right. So you

1 only (inaudible) a couple of weeks where you had
2 (inaudible)?

3 **INMATE BROWN:** No, I can't remember. I just
4 remember getting caught.

5 **PRESIDING COMMISSIONER PORTER:** Okay. All right,
6 let's go to your adult convictions. In '71 you were
7 arrested by Los Angeles County sheriffs for the
8 kidnapping and grand theft person. What happened there?

9 **INMATE BROWN:** I had a fight at a party.

10 **PRESIDING COMMISSIONER PORTER:** Okay, how did the
11 kidnapping get involved in that?

12 **INMATE BROWN:** I never really could figure that
13 part out except that when we were fighting we went from
14 one room to the other.

15 **PRESIDING COMMISSIONER PORTER:** Did you drag
16 somebody?

17 **INMATE BROWN:** Well, we were just in a fistfight
18 but I never really knew what the kidnapping was all
19 about. - You know, - but then there again I was just
20 (inaudible).

21 **PRESIDING COMMISSIONER PORTER:** And grand theft
22 person, did you take some money from him and then he
23 said, 'Hey, give it back to me,' and then the fight
24 started --

25 **INMATE BROWN:** Well, there was four of us in
26 there. I think some things got taken and we left, yeah.
27 (Inaudible).

1 **PRESIDING COMMISSIONER PORTER:** Okay. Do you
2 remember how your fight started?

3 **INMATE BROWN:** No, not really, I remember fighting
4 though. I remember picking the fight. And I remember
5 fighting with the guy.

6 **PRESIDING COMMISSIONER PORTER:** Um-hmm.

7 **INMATE BROWN:** But I don't remember how it got
8 started now.

9 **PRESIDING COMMISSIONER PORTER:** And you don't
10 remember the part about how you guys were kidnapping?

11 **INMATE BROWN:** Well, I never really figured it --
12 the only thing I could figure out was going from one room
13 to the next in the fight. And I think that's what was
14 reported.

15 **PRESIDING COMMISSIONER PORTER:** Okay.

16 **INMATE BROWN:** Because they dropped it when they
17 let us go in the Army. (inaudible) dropped the case.

18 **PRESIDING COMMISSIONER PORTER:** Oh, you went to
19 the Army after that case?

20 **INMATE BROWN:** Yeah, this was just (inaudible).

21 **PRESIDING COMMISSIONER PORTER:** How long were you
22 in the Army?

23 **INMATE BROWN:** Six months.

24 **PRESIDING COMMISSIONER PORTER:** What happened?

25 **INMATE BROWN:** I had a medical discharge for my
26 knee.

27 **PRESIDING COMMISSIONER PORTER:** You already busted

1 your knee while on basic training or how did that --

2 **INMATE BROWN:** I tore a cartilage in it. So out
3 of the four of us I was -- I went home and the rest of
4 them stayed in the service.

5 **PRESIDING COMMISSIONER PORTER:** Okay. Oh, all
6 four of you guys went in.

7 **INMATE BROWN:** We all went in, yeah.

8 **PRESIDING COMMISSIONER PORTER:** So the judge told
9 you, you go to jail or go to the Army.

10 **INMATE BROWN:** Yeah, per the judge either go in
11 the Army and grow up or (inaudible).

12 **PRESIDING COMMISSIONER PORTER:** Okay.

13 **INMATE BROWN:** And that's what he told us.

14 **PRESIDING COMMISSIONER PORTER:** All right, so in
15 '73 there was another arrest. It just says a ordinance
16 violation, some kind of (inaudible) trouble. What'd you
17 do?

18 **INMATE BROWN:** I don't remember.

19 **PRESIDING COMMISSIONER PORTER:** Okay.

20 **INMATE BROWN:** I really don't.

21 **PRESIDING COMMISSIONER PORTER:** And then in '83
22 you're out of L.A. County and live in Sacramento.

23 **INMATE BROWN:** Uh-huh.

24 **PRESIDING COMMISSIONER PORTER:** And (inaudible)
25 there for fighting.

26 **INMATE BROWN:** Yeah, it was a bar fight.

27 **PRESIDING COMMISSIONER PORTER:** All right. What

1 happened there?

2 **INMATE BROWN:** Got into a fight.

3 **PRESIDING COMMISSIONER PORTER:** You don't remember
4 who started it or anything.

5 **INMATE BROWN:** No, not really, I just remember
6 fighting and (inaudible).

7 **PRESIDING COMMISSIONER PORTER:** Okay. And in 1988
8 a Sacramento sheriff arrested you again. This was for
9 possession of a controlled substance. What happened
10 there? (Inaudible).

11 **INMATE BROWN:** I don't remember. I really don't
12 remember.

13 **PRESIDING COMMISSIONER PORTER:** Okay.

14 **INMATE BROWN:** I think I got arrested in a motel.

15 **PRESIDING COMMISSIONER PORTER:** All right. They
16 say you tried to sell a dangerous weapon. What was the
17 dangerous weapon?

18 **INMATE BROWN:** I was trying to sell (inaudible) --

19 **PRESIDING COMMISSIONER PORTER:** Uh-huh.

20 **INMATE BROWN:** -- because I was (inaudible).

21 **PRESIDING COMMISSIONER PORTER:** Okay,
22 manufacturing and selling a dangerous weapon.

23 **INMATE BROWN:** I had a pistol when I got arrested,
24 but I wasn't trying to sell it. I was just sleeping when
25 they arrested me.

26 **PRESIDING COMMISSIONER PORTER:** Okay.

27 **INMATE BROWN:** (Inaudible).

1 **PRESIDING COMMISSIONER PORTER:** And you got --

2 **INMATE BROWN:** And that was dropped to down to a
3 drug diversion, the whole thing was.

4 **PRESIDING COMMISSIONER PORTER:** And you got three
5 years probation, correct. And okay, here a year later
6 basically you got convicted of the murder. And we don't
7 have too much personal facts (inaudible) where were you
8 born and raised?

9 **INMATE BROWN:** I was born in Tacoma, Washington.
10 And I was raised in California. (Inaudible) --

11 **PRESIDING COMMISSIONER PORTER:** And how old were
12 you when you --

13 **INMATE BROWN:** Since 1970.

14 **PRESIDING COMMISSIONER PORTER:** And how old were
15 you when you moved to Los Angeles?

16 **INMATE BROWN:** Oh, probably (inaudible) six or
17 seven years old.

18 **PRESIDING COMMISSIONER PORTER:** Seven. All right.
19 And you got married in '73.

20 **INMATE BROWN:** Um-hmm.

21 **PRESIDING COMMISSIONER PORTER:** To a Miss Linda
22 Brown. (phonetic) What happened there?

23 **INMATE BROWN:** We were married and had two
24 children.

25 **PRESIDING COMMISSIONER PORTER:** Um-hmm.

26 **INMATE BROWN:** And then we got divorced, I believe
27 in, I can't remember. I can't recollect the year the

1 divorce was.

2 PRESIDING COMMISSIONER PORTER: In '84?

3 INMATE BROWN: I'm think (inaudible) there.

4 PRESIDING COMMISSIONER PORTER: And you married
5 again, a Miss Rebecca Lee (phonetic) in 1990.

6 INMATE BROWN: I'm sorry?

7 PRESIDING COMMISSIONER PORTER: You were already
8 in prison weren't you, at that time?

9 INMATE BROWN: Yeah.

10 PRESIDING COMMISSIONER PORTER: Had you been
11 seeing her?

12 INMATE BROWN: Uh-huh, yeah basically when I was
13 free.

14 PRESIDING COMMISSIONER PORTER: Okay. How did
15 that marriage turn out?

16 INMATE BROWN: It's good, just she has a hard time
17 getting up here because it's so far but --

18 PRESIDING COMMISSIONER PORTER: You're still
19 married?

20 INMATE BROWN: Yeah, we're still (inaudible).

21 PRESIDING COMMISSIONER PORTER: Where does she
22 live?

23 INMATE BROWN: She lives in North Highlands
24 outside of Sacramento.

25 PRESIDING COMMISSIONER PORTER: Okay. All right.
26 You guys have any kids in that marriage?

27 INMATE BROWN: No.

1 **PRESIDING COMMISSIONER PORTER:** That's good, she's
2 actually still hanging with you.

3 **INMATE BROWN:** Yeah, still waiting (inaudible) a
4 long time.

5 **PRESIDING COMMISSIONER PORTER:** So you attended
6 high school, Marshall High School. And how'd did you do
7 in school?

8 **INMATE BROWN:** Oh, not too good.

9 **PRESIDING COMMISSIONER PORTER:** What happened?

10 **INMATE BROWN:** I just couldn't (inaudible).

11 **PRESIDING COMMISSIONER PORTER:** Grade-wise or
12 would you get suspended or --

13 **INMATE BROWN:** Oh, just getting in trouble.

14 **PRESIDING COMMISSIONER PORTER:** Yeah? What kind
15 of trouble were you getting in?

16 **INMATE BROWN:** I was cutting class and just not
17 going to school. Can I get a drink of water?

18 (Inaudible) thank you.

19 **PRESIDING COMMISSIONER PORTER:** (Inaudible)

20 **INMATE BROWN:** Thank you.

21 **PRESIDING COMMISSIONER PORTER:** So when'd you
22 start having problems in school?

23 **INMATE BROWN:** Well, I had a (inaudible).

24 **PRESIDING COMMISSIONER PORTER:** Um-hmm, and you
25 just started cutting school?

26 **INMATE BROWN:** Hanging around with (inaudible).

27 **PRESIDING COMMISSIONER PORTER:** All right. So did

1 you graduate?

2 **INMATE BROWN:** No, I got a GED when I was in
3 Folsom prison.

4 **PRESIDING COMMISSIONER PORTER:** Okay. And it says
5 that you got your diploma in '71.

6 **INMATE BROWN:** No, that's --

7 **PRESIDING COMMISSIONER PORTER:** (Inaudible).

8 **INMATE BROWN:** I was going to night school but I
9 told them the last time I was at the last Board that that
10 was not correct.

11 **PRESIDING COMMISSIONER PORTER:** Okay. Well, you
12 got let your counselor know that (inaudible) not
13 corrected. And so what kind of jobs did you have?

14 **INMATE BROWN:** I was a roofer. I was in the union
15 (inaudible).

16 **PRESIDING COMMISSIONER PORTER:** At what age did
17 you start?

18 **INMATE BROWN:** Well, I started when I was pretty
19 young because my dad had a roofing company. And then
20 when I got older I entered the union (inaudible) and I
21 worked for union companies.

22 **PRESIDING COMMISSIONER PORTER:** And you did black
23 top, sheet metal --

24 **INMATE BROWN:** Yeah, I did commercial high rises
25 and I did all of it. I was a supervisor for (inaudible).

26 **PRESIDING COMMISSIONER PORTER:** (Inaudible)

27 **INMATE BROWN:** (Inaudible) everything fell apart,

1 well my marriage fell apart, and that's when I started
2 kind of going down hill, or that (inaudible).

3 **PRESIDING COMMISSIONER PORTER:** You were a
4 foreman, sounded like you were doing pretty good.

5 **INMATE BROWN:** Yeah, I was doing good.

6 **PRESIDING COMMISSIONER PORTER:** What happened?

7 Why'd you go and mess with these guys and --

8 **INMATE BROWN:** I don't know.

9 **PRESIDING COMMISSIONER PORTER:** -- (inaudible) at
10 that time you were using drugs.

11 **INMATE BROWN:** I started yeah, at that time, after
12 the divorce. I (inaudible) --

13 **PRESIDING COMMISSIONER PORTER:** How old were you
14 when you started using drugs?

15 **INMATE BROWN:** I was in my thirties.

16 **PRESIDING COMMISSIONER PORTER:** That was the first
17 time you started using drugs?

18 **INMATE BROWN:** Yeah. I experimented when I was
19 (inaudible) but really all I did was smoke and drink beer.
20 and that was pretty much it.

21 **PRESIDING COMMISSIONER PORTER:** Um-hmm.

22 **INMATE BROWN:** And when that happened, I started
23 riding motorcycles and -- well, I always rode motorcycles
24 but after the divorce I (inaudible).

25 **PRESIDING COMMISSIONER PORTER:** Did you join a
26 motorcycle club?

27 **INMATE BROWN:** No, I never was in a club, no.

1 **PRESIDING COMMISSIONER PORTER:** Did you hang
2 around with bikers when you used to ride motorcycles?

3 **INMATE BROWN:** Yeah, well we all did, yeah.

4 **PRESIDING COMMISSIONER PORTER:** What'd you call
5 yourselves?

6 **INMATE BROWN:** Well, it wasn't never no club. I
7 was never in a club.

8 **PRESIDING COMMISSIONER PORTER:** And then basically
9 you started using drugs in your thirties --

10 **INMATE BROWN:** Yeah.

11 **PRESIDING COMMISSIONER PORTER:** -- and everything
12 just kind of --

13 **INMATE BROWN:** It got kind of (inaudible).

14 **PRESIDING COMMISSIONER PORTER:** How'd you go about
15 your work? Could you still work when you did drugs?

16 **INMATE BROWN:** Yeah, at first I was still running
17 a crew for Erik's and Rogers (phonetic).

18 **PRESIDING COMMISSIONER PORTER:** Um-hmm.

19 **INMATE BROWN:** And then I quit that and within
20 like a year or so I was in here (inaudible).

21 **PRESIDING COMMISSIONER PORTER:** All right. We're
22 going to change gears and go to post-conviction factors
23 with the Deputy Commissioner.

24 **DEPUTY COMMISSIONER MORRIS:** All right Mr. Brown
25 this looks like -- I saw something that said (inaudible)
26 in prison. (Inaudible) looks like it says two
27 (inaudible).

1 **INMATE BROWN:** This will be my third one.

2 **DEPUTY COMMISSIONER MORRIS:** This will be your
3 third one. (Inaudible)

4 **INMATE BROWN:** Well, at the time I came in they
5 postponed it for a year because of a psych evaluation.

6 **DEPUTY COMMISSIONER MORRIS:** Oh.

7 **INMATE BROWN:** So they (inaudible).

8 **DEPUTY COMMISSIONER MORRIS:** Well it looks like
9 the last (inaudible) December of '02. And that's when
10 you were denied (inaudible) then you came back in
11 (inaudible).

12 **INMATE BROWN:** Oh, that's in '93 and that's '92
13 and then I came back and got one.

14 **DEPUTY COMMISSIONER MORRIS:** And that brings us up
15 to --

16 **INMATE BROWN:** That brings us up to --

17 **DEPUTY COMMISSIONER MORRIS:** (Inaudible) and I'm
18 looking at a classification score of 19 and that's as low
19 as a lifetime is allowed. I'm also looking at a gang
20 sheet(inaudible). You've been in prison since '89?

21 **INMATE BROWN:** Uh-huh.

22 **DEPUTY COMMISSIONER MORRIS:** How did you manage to
23 avoid gang affiliation?

24 **INMATE BROWN:** I've just never been affiliated
25 with no gangs, you mean in prison?

26 **DEPUTY COMMISSIONER MORRIS:** Uh-huh.

27 **INMATE BROWN:** I just (inaudible) --

1 **DEPUTY COMMISSIONER MORRIS:** (Inaudible) or
2 nothing.

3 **INMATE BROWN:** Huh?

4 **DEPUTY COMMISSIONER MORRIS:** Bikers?

5 **INMATE BROWN:** No.

6 **DEPUTY COMMISSIONER MORRIS:** They weren't
7 interested in you?

8 **INMATE BROWN:** No, no.

9 **DEPUTY COMMISSIONER MORRIS:** Well I don't see any
10 association and that's a good thing.

11 **INMATE BROWN:** I'm just not that kind of person to
12 be hooked up with any kind of gang members.

13 **DEPUTY COMMISSIONER MORRIS:** Okay. It also says
14 you managed to accrue three or four enemies here.
15 (Inaudible) and how you doing on the enemies, you all
16 right?

17 **INMATE BROWN:** Yeah.

18 **DEPUTY COMMISSIONER MORRIS:** No problems.

19 **INMATE BROWN:** No.

20 **DEPUTY COMMISSIONER MORRIS:** You haven't been
21 assaulted?

22 **INMATE BROWN:** No.

23 **DEPUTY COMMISSIONER MORRIS:** You haven't assaulted
24 anyone?

25 **INMATE BROWN:** No. I was in a fight a few years
26 ago but it was --

27 **DEPUTY COMMISSIONER MORRIS:** That's what got you

1 the 115s.

2 **INMATE BROWN:** Uh-huh.

3 **DEPUTY COMMISSIONER MORRIS:** Valid?

4 **INMATE BROWN:** Yeah.

5 **DEPUTY COMMISSIONER MORRIS:** We will get to that
6 in a minute. I'm looking at the adult basic education
7 scoring and I finally found it dated July 29, 1999 and
8 you had tested at that time at 11.02. And in '91 you
9 tested higher than that at 11.12. (Inaudible) I do see
10 eventually you talk about (inaudible) and there was
11 confusion about the 71 versus the 91 (inaudible).

12 **INMATE BROWN:** Uh-huh.

13 **DEPUTY COMMISSIONER MORRIS:** (Inaudible)

14 **INMATE BROWN:** Right.

15 **DEPUTY COMMISSIONER MORRIS:** Okay. I see also
16 that you attended Marshall High School in (inaudible).

17 **INMATE BROWN:** Uh-huh.

18 **DEPUTY COMMISSIONER MORRIS:** You completed 10th
19 grade?

20 **INMATE BROWN:** Yes.

21 **DEPUTY COMMISSIONER MORRIS:** Did you do well in
22 school?

23 **INMATE BROWN:** Well, I did when I applied myself
24 but (inaudible) I never really showed up (inaudible).

25 **DEPUTY COMMISSIONER MORRIS:** Right, you told me.
26 And you were received 8/08/89. You were about 36 years
27 old --

1 **INMATE BROWN:** Yeah.

2 **DEPUTY COMMISSIONER MORRIS:** -- at the time of
3 your life term?

4 **INMATE BROWN:** I was I think 35 when I was
5 arrested. I got arrested on 8/08/88 so I was maybe 35.

6 **DEPUTY COMMISSIONER MORRIS:** Okay. (Inaudible)
7 regard to disciplinaries I see that you have earned
8 (inaudible) 4/03 of '03. And that was basically a few
9 months after your last face-to-face.

10 **INMATE BROWN:** Yeah, I know.

11 **DEPUTY COMMISSIONER MORRIS:** At that face-to-face
12 they spent a lot time talking about being -- they talk
13 about your disciplinaries and the need to be clean, do
14 you recall this conversation?

15 **INMATE BROWN:** I don't recall that last
16 (inaudible).

17 **DEPUTY COMMISSIONER MORRIS:** Do you recall some
18 language that, it went something like this, 'you need to
19 be squeaky.'

20 **INMATE BROWN:** I remember that (inaudible).

21 **DEPUTY COMMISSIONER MORRIS:** What happened.

22 **INMATE BROWN:** I was just working, and I was
23 trying to work on some plumbing and Abram (phonetic) was
24 there. And I had a guy on me from the Armenian Army.

25 **DEPUTY COMMISSIONER MORRIS:** He was on you? On
26 your back (inaudible)?

27 **INMATE BROWN:** No, he just kept -- I don't know

1 how to explain it. I asked him four or five times to,
2 you know, 'You're just wandering over here, so why don't
3 you mind your own business?'

4 **DEPUTY COMMISSIONER MORRIS:** Had he touched you?

5 **INMATE BROWN:** Huh?

6 **DEPUTY COMMISSIONER MORRIS:** Did he lay his hands
7 on you?

8 **INMATE BROWN:** Yeah, he just come up on me and
9 then --

10 **DEPUTY COMMISSIONER MORRIS:** Then you put hands on
11 him?

12 **INMATE BROWN:** No, I did not.

13 **DEPUTY COMMISSIONER MORRIS:** Okay.

14 **INMATE BROWN:** And I knocked him away from the
15 plumbing.

16 **DEPUTY COMMISSIONER MORRIS:** Okay.

17 **INMATE BROWN:** And the police were at the door.

18 **DEPUTY COMMISSIONER MORRIS:** So he was talking and
19 you knocked him out?

20 **INMATE BROWN:** I didn't knock him out, no. I
21 knocked him back away from me. But no, I didn't knock
22 him out. I didn't hurt him.

23 **DEPUTY COMMISSIONER MORRIS:** I actually have a
24 statement.

25 **INMATE BROWN:** Yeah?

26 **DEPUTY COMMISSIONER MORRIS:** Let's see you got
27 maximum-security housing for that one.

1 **INMATE BROWN:** Right.

2 **DEPUTY COMMISSIONER MORRIS:** And you also got a
3 (inaudible) out of that one.

4 **INMATE BROWN:** Yeah.

5 **DEPUTY COMMISSIONER MORRIS:** It looks to me like
6 (inaudible) reflexes were pretty (inaudible) with him.
7 You were assessed (inaudible) time to serve one month, 15
8 days and then you were back out (inaudible)?

9 **INMATE BROWN:** Yeah, we were both back on the
10 lines again.

11 **DEPUTY COMMISSIONER MORRIS:** Okay.

12 **INMATE BROWN:** Yeah.

13 **DEPUTY COMMISSIONER MORRIS:** So were you guys all
14 right?

15 **INMATE BROWN:** Yeah, we were fine. I was on the
16 line a week after that happened. And we were just
17 staying away and we were okay afterwards.

18 **DEPUTY COMMISSIONER MORRIS:** (Inaudible) talked
19 about you and this guy James had some sort of face off on
20 the yard not even a month later, what was that about?

21 **INMATE BROWN:** I don't know anything about that.
22 I was in the (inaudible).

23 **DEPUTY COMMISSIONER MORRIS:** I'm talking about
24 something when you got out, when you got out. I saw a
25 chrono that talked about some aggressive behavior.

26 **INMATE BROWN:** (Inaudible)

27 **DEPUTY COMMISSIONER MORRIS:** Come on now, I'm

1 going to find it in a minute, you know about it.

2 **INMATE BROWN:** No, no, no I don't.

3 **DEPUTY COMMISSIONER MORRIS:** Was the guy's name
4 James?

5 **INMATE BROWN:** No.

6 **DEPUTY COMMISSIONER MORRIS:** What was his name?

7 **INMATE BROWN:** I don't even remember.

8 **PRESIDING COMMISSIONER PORTER:** We've got a -- you
9 signed a (inaudible) chrono along that because that's in
10 there.

11 **INMATE BROWN:** He got 60 days for that and I got
12 90 days.

13 **DEPUTY COMMISSIONER MORRIS:** (Inaudible) got for
14 both?

15 **INMATE BROWN:** Probably both.

16 **DEPUTY COMMISSIONER MORRIS:** Yeah, a mutual non-
17 aggression chrono here dated 6/26/03 and this was a month
18 after your hearing. You were involved in a -- and it
19 says here, the language says, you were involved in an
20 infraction (inaudible) CDC 115 for conduct in the use of
21 violence(inaudible) inmates James and Brown (inaudible).
22 (Inaudible) animosity provoked between the two of them.
23 (Inaudible) you agreed (inaudible) May 9th. You don't
24 remember that?

25 **INMATE BROWN:** Oh, yeah they called me in to sign
26 the agreement.

27 **DEPUTY COMMISSIONER MORRIS:** Yes.

1 **INMATE BROWN:** Because they said we couldn't be on
2 the line together and as we had signed a (inaudible)
3 chrono but there was no -- that was coming before when
4 the incident --

5 **DEPUTY COMMISSIONER MORRIS:** Oh, okay.

6 **INMATE BROWN:** -- we never had another problem.

7 **DEPUTY COMMISSIONER MORRIS:** Okay. So this was an
8 effort on the part of the staff to make sure that there
9 was peace on the yard.

10 **INMATE BROWN:** In case we had got into it.

11 **DEPUTY COMMISSIONER MORRIS:** Right.

12 **INMATE BROWN:** In case we got into it again
13 (inaudible) --

14 **DEPUTY COMMISSIONER MORRIS:** Right

15 **INMATE BROWN:** (Inaudible)

16 **DEPUTY COMMISSIONER MORRIS:** (Inaudible)

17 **INMATE BROWN:** Uh-huh.

18 **DEPUTY COMMISSIONER MORRIS:** Was that your
19 (inaudible) in that case?

20 **INMATE BROWN:** Yeah.

21 **DEPUTY COMMISSIONER MORRIS:** Okay. I thought it
22 was a new behavior.

23 **INMATE BROWN:** No.

24 **ATTORNEY CHRISTENSEN:** (Inaudible)

25 **DEPUTY COMMISSIONER MORRIS:** Okay. Fine then
26 that's (inaudible) driving at (inaudible) and you got out
27 and you went right back in (inaudible).

1 **INMATE BROWN:** Oh no, no (inaudible).

2 **DEPUTY COMMISSIONER MORRIS:** That didn't happen?

3 **INMATE BROWN:** No it didn't.

4 **DEPUTY COMMISSIONER MORRIS:** All right, I

5 misunderstood. So the last serious disciplinary was
6 (inaudible).

7 **INMATE BROWN:** Yeah.

8 **DEPUTY COMMISSIONER MORRIS:** At your last hearing
9 you talked about (inaudible). (Inaudible) so you come to
10 this hearing now about three years later than the last
11 disciplinary hearing. (Inaudible) business between that
12 disciplinary and the disciplinary hearing. And that's
13 not to say that you're not (inaudible) trustworthy
14 (inaudible). We'll come back (inaudible). I'm also
15 looking at 128s, negative chronos. I see your last
16 negative chrono was dated 2/02/2000. (Inaudible) seem to
17 be doing pretty well on that but you don't want to get
18 any negative chronos at all because (inaudible) negative
19 chronos will hurt you.

20 **INMATE BROWN:** (Inaudible)

21 **DEPUTY COMMISSIONER MORRIS:** Blue paper, the 115s,
22 I would just describe here as a stake in the chest. They
23 will hurt you (inaudible). Let me talk to you about
24 academics now. I see that you got your GED in
25 (inaudible) laborer. I don't see that you've done
26 anything (inaudible).

27 **INMATE BROWN:** Well, I (inaudible) school courses.

1

2 **DEPUTY COMMISSIONER MORRIS:** (Inaudible) I'm
3 talking about --

4 **INMATE BROWN:** (Inaudible) vocational welding, I
5 completed that.

6 **DEPUTY COMMISSIONER MORRIS:** I'm not talking about
7 vocational welding now. (Inaudible).

8 **INMATE BROWN:** Oh, okay. (Inaudible)

9 **DEPUTY COMMISSIONER MORRIS:** (Inaudible) about.

10 **INMATE BROWN:** No, well that's all I've done
11 (inaudible).

12 **DEPUTY COMMISSIONER MORRIS:** Why is that?

13 **INMATE BROWN:** I thought that would be enough.

14 **DEPUTY COMMISSIONER MORRIS:** It's not enough.
15 (Inaudible).

16 **INMATE BROWN:** The college courses and stuff has
17 just started back up again.

18 **DEPUTY COMMISSIONER MORRIS:** (Inaudible) I really
19 (inaudible).

20 **INMATE BROWN:** Uh-huh.

21 **DEPUTY COMMISSIONER MORRIS:** All right?

22 **INMATE BROWN:** Yeah.

23 **DEPUTY COMMISSIONER MORRIS:** All right. December
24 (inaudible) hours (inaudible).

25 **INMATE BROWN:** I've no call to really.

26 **DEPUTY COMMISSIONER MORRIS:** Okay. (Inaudible) so
27 (inaudible) AAs and BAs, even (inaudible). I'm just

1 going to tell you that. I know (inaudible) GED but your
2 GED is not enough. The last time (inaudible). Let's see
3 here. Vocations now. I saw in your C file, and you
4 talked to Mr. Porter about it, your working trade. You
5 got about 20 years (inaudible). You came to prison in
6 '89. It looks to me like you started vocation in about
7 '97 so you started (inaudible) vocation.

8 **INMATE BROWN:** Uh-huh.

9 **DEPUTY COMMISSIONER MORRIS:** So you sat around for
10 about eight years and (inaudible) no vocations. And then
11 in '97 you started welding --

12 **INMATE BROWN:** No I started welding before that. I
13 stared welding in Folsom.

14 **DEPUTY COMMISSIONER MORRIS:** When were you in
15 Folsom?

16 **INMATE BROWN:** In '90 or '91 I worked in -- I was
17 at PIA. I was a welder, I was in machine shop vocation,
18 then I went into the welding. And then when I went to
19 (Inaudible) prison in '93 I went into vocational welding
20 there.

21 **DEPUTY COMMISSIONER MORRIS:** Okay. I didn't see
22 all that.

23 **INMATE BROWN:** Yeah, well I've got files for all
24 of those.

25 **DEPUTY COMMISSIONER MORRIS:** So you've been in the
26 vocational welding since about '91 then?

27 **INMATE BROWN:** I think it was --

1 **DEPUTY COMMISSIONER MORRIS:** '91, '93, or both?

2 **INMATE BROWN:** Well, I was at PIA in '91 and then
3 I went into vocational -- I got (inaudible) level course
4 so in '93 when I got to (inaudible) --

5 **DEPUTY COMMISSIONER MORRIS:** '93.

6 **INMATE BROWN:** I started in a vocational welding
7 program (inaudible).

8 **DEPUTY COMMISSIONER MORRIS:** (Inaudible).

9 **INMATE BROWN:** Uh-huh.

10 **DEPUTY COMMISSIONER MORRIS:** You completed
11 vocational welding July of '02.

12 **INMATE BROWN:** Um-hmm.

13 **DEPUTY COMMISSIONER MORRIS:** (Inaudible) Now I saw
14 the -- that's the only certificate of completion that you
15 have. Is that correct?

16 **INMATE BROWN:** Yeah, that's correct.

17 **DEPUTY COMMISSIONER MORRIS:** All right, now I see
18 an attempt -- I saw something about (inaudible). Did you
19 work in plumbing for a bit?

20 **INMATE BROWN:** I was, yeah I was.

21 **DEPUTY COMMISSIONER MORRIS:** What year did you do
22 that and tell me about it, what happened?

23 **INMATE BROWN:** I got into that fight. I got into
24 that fight and went to the hole and I lost my job.

25 **DEPUTY COMMISSIONER MORRIS:** That was in '03?

26 **INMATE BROWN:** Uh-huh.

27 **DEPUTY COMMISSIONER MORRIS:** Okay. (Inaudible) I

1 saw something here; I saw a chrono that talked about it,
2 vocational machine shop but I only saw one chrono
3 regarding that.

4 **INMATE BROWN:** I believe it was here.

5 **DEPUTY COMMISSIONER MORRIS:** (Inaudible)
6 terminated your plumbing.

7 **INMATE BROWN:** (Inaudible) vocational machine shop
8 in Folsom.

9 **DEPUTY COMMISSIONER MORRIS:** And what year was
10 that?

11 **INMATE BROWN:** I believe '90 --

12 **DEPUTY COMMISSIONER MORRIS:** '98?

13 **INMATE BROWN:** '90 or '91.

14 **DEPUTY COMMISSIONER MORRIS:** (Inaudible)

15 **INMATE BROWN:** I left Folsom in '93.

16 **DEPUTY COMMISSIONER MORRIS:** So how long did you
17 participate in vocational machine?

18 **INMATE BROWN:** About six months to a year.

19 **DEPUTY COMMISSIONER MORRIS:** Did you drop it?

20 **INMATE BROWN:** No they dropped it, the class.

21 (Inaudible) and there was no one to take his place. And
22 that's why I went on to the PIA welding after that
23 because they just disbanded the whole classroom because
24 there was no other instructor to take his place.

25 **DEPUTY COMMISSIONER MORRIS:** So you went
26 (inaudible) to machine shop?

27 **INMATE BROWN:** Uh-huh.

1 **DEPUTY COMMISSIONER MORRIS:** And went to PIA
2 welding.

3 **INMATE BROWN:** Yes, (inaudible).

4 **DEPUTY COMMISSIONER MORRIS:** That's (inaudible).

5 How long did you work there?

6 **INMATE BROWN:** A year.

7 **DEPUTY COMMISSIONER MORRIS:** And was that in '93
8 and '94.

9 **INMATE BROWN:** No, '93 or '92, I think '92.

10 **DEPUTY COMMISSIONER MORRIS:** And then I saw
11 another chrono dated 1999 in (inaudible)?

12 **INMATE BROWN:** That's right (inaudible).

13 **DEPUTY COMMISSIONER MORRIS:** (Inaudible)

14 **INMATE BROWN:** That's right, that would be the
15 Solano (inaudible).

16 **DEPUTY COMMISSIONER MORRIS:** As a welder
17 (inaudible)?

18 **INMATE BROWN:** (Inaudible).

19 **DEPUTY COMMISSIONER MORRIS:** Any other institution
20 work?

21 **INMATE BROWN:** Yeah.

22 **DEPUTY COMMISSIONER MORRIS:** On what?

23 **INMATE BROWN:** I just worked in plant ops always
24 in a welding capacity. I worked at PIA (inaudible) Mule
25 Creek as a maintenance welder. I worked in plant ops
26 here (inaudible) as a welder.

27 **DEPUTY COMMISSIONER MORRIS:** As a welder in plant

1 ops?

2 **INMATE BROWN:** Yeah.

3 **DEPUTY COMMISSIONER MORRIS:** Okay, so that tells
4 me that you have good scores.

5 **INMATE BROWN:** Right. I do work --

6 **DEPUTY COMMISSIONER MORRIS:** And you did work for
7 PIA, you did work for a machine plant in plant ops
8 (inaudible) some experience there.

9 **INMATE BROWN:** I work in trade (inaudible) there.

10 **DEPUTY COMMISSIONER MORRIS:** Okay. Let me talk to
11 you about self-help for a minute. As I reviewed the C
12 file and as I listened to your conversation with the
13 Commissioner, there's a history of drug use and
14 (inaudible) habitual cocaine abuse, and amphetamine use,
15 and marijuana. Anything else that we're missing here?

16 **INMATE BROWN:** No.

17 **DEPUTY COMMISSIONER MORRIS:** Now as regards to
18 that history of drug use I'm going to ask you about some
19 self-help programs. And I realize you were asked these
20 questions before, (inaudible) hear this a lot. What have
21 you done in terms of self-help? What I see is AA
22 participation in '06. How long have you been (inaudible)
23 AA?

24 **INMATE BROWN:** Well, I tried to get into the
25 program in North.

26 **DEPUTY COMMISSIONER MORRIS:** Just tell me how long
27 you've been (inaudible).

1 **INMATE BROWN:** Probably six or eight months.

2 **DEPUTY COMMISSIONER MORRIS:** And what is your
3 (inaudible)?

4 **INMATE BROWN:** (Inaudible) came back.

5 **DEPUTY COMMISSIONER MORRIS:** What year?

6 **INMATE BROWN:** Oh, this was -- it has just been
7 this year so.

8 **DEPUTY COMMISSIONER MORRIS:** Because all it says
9 is (inaudible)

10 **INMATE BROWN:** Yeah, I did some NA, probably in
11 Solano.

12 **DEPUTY COMMISSIONER MORRIS:** Yeah, I want to ask
13 you why did you not participate in AA earlier.

14 **INMATE BROWN:** Well, it took me awhile to come
15 around (inaudible).

16 **DEPUTY COMMISSIONER MORRIS:** And I'm asking that
17 in the face of -- I'm looking at a number of hearings
18 where they talked about you needed to do that. So
19 (inaudible) --

20 **INMATE BROWN:** I didn't feel I needed before.

21 **DEPUTY COMMISSIONER MORRIS:** You didn't think you
22 needed it.

23 **INMATE BROWN:** No, I didn't.

24 **DEPUTY COMMISSIONER MORRIS:** I'm going back to
25 here's one dated 1993 authored by Mr. Deacons. (phonetic)
26 And this was a document and he says here that, "The
27 inmate needs self-help and would benefit from AA and NA."

1 And it goes on (inaudible) talked about that AA program.
2 You still think you don't need it.

3 **INMATE BROWN:** No, I think I need it. But like I
4 said it could be (inaudible).

5 **DEPUTY COMMISSIONER MORRIS:** (Inaudible) I think
6 you needed (inaudible) if you participated (inaudible).
7 AA/NA is one of them. And I would be less than honest
8 with you if I told you that (inaudible). The good thing
9 about AA and NA is if you are part of a group that's a
10 good thing, but you don't have to be a part of the group.
11 It's steady (inaudible) and (inaudible) independent
12 (inaudible).

13 **INMATE BROWN:** Right.

14 **DEPUTY COMMISSIONER MORRIS:** In order to do that
15 when you come here and you say you've done it
16 (inaudible). This help applies to your life, some good
17 principles for managing your life, with or without
18 (inaudible) wherever you are in (inaudible), okay. I see
19 here under self-help that you did participate in Project
20 Change. And before that I see a chrono dated
21 (inaudible). Now Project Change has a number of
22 (inaudible) to it outlined. Is that when you took the
23 anger management?

24 **INMATE BROWN:** That was the anger management.

25 **DEPUTY COMMISSIONER MORRIS:** Okay.

26 **INMATE BROWN:** That I took, yeah.

27 **DEPUTY COMMISSIONER MORRIS:** All right, that's

1 what I kind of suspected because the anger management is
2 not itself a self-help break out. It was a part of the
3 Project Change (inaudible).

4 **INMATE BROWN:** Well, they just called in anger
5 management.

6 **DEPUTY COMMISSIONER MORRIS:** How many chronos for
7 Project Change (inaudible)?

8 **INMATE BROWN:** I don't know. I didn't even know
9 it was called Project Change until I talked to the
10 counselor, but I thought that the whole program was just
11 anger management --

12 **DEPUTY COMMISSIONER MORRIS:** Yes.

13 **INMATE BROWN:** -- and that's all the uses that we
14 got when I was in there. There was (inaudible).

15 **DEPUTY COMMISSIONER MORRIS:** And you're saying
16 that all you did was anger management?

17 **INMATE BROWN:** That's all we did (inaudible) --

18 **DEPUTY COMMISSIONER MORRIS:** Because (inaudible).

19 **ATTORNEY CHRISTENSEN:** Actually Commissioner, I
20 think he has a certificate here and it says, "Project
21 Change (inaudible) February 9, 2004." And then it says
22 he satisfactorily completed the 44 (inaudible) anger
23 (inaudible) certificate.

24 **DEPUTY COMMISSIONER MORRIS:** Okay, and the chronos
25 say something here. The chronos keep (inaudible) Project
26 Change, and I think that's what you said, is that
27 correct?

1 **INMATE BROWN:** Well, I think (inaudible).

2 **DEPUTY COMMISSIONER MORRIS:** Okay, so I understand
3 and it's a good thing that you participated in the
4 project. And it's a good thing that you participated in
5 the anger management. And what I'm just trying to
6 establish here is where are we in terms of (inaudible),
7 when did it happen and how long ago and what have you
8 done since.

9 **INMATE BROWN:** Oh, all right.

10 **DEPUTY COMMISSIONER MORRIS:** So you have no
11 participation since 2004 (inaudible).

12 **INMATE BROWN:** No.

13 **DEPUTY COMMISSIONER MORRIS:** Okay. Now I was also
14 looking for laudatory chronos and I see one and that was
15 authored by someone (inaudible) Project Change chrono.
16 That's an '04 chrono (inaudible) laudatory Project Change
17 authored by a Skinner. (phonetic) And that's dated
18 November 9 of 2004. And here's a chrono that talked
19 about something (inaudible) self-esteem, assertiveness,
20 goal setting, anger management, (inaudible) skills,
21 stress reduction, drug and alcohol abuse, (inaudible),
22 parenting, (inaudible), life skills and parole release.

23 **INMATE BROWN:** We did cover those, yeah. I
24 remember those.

25 **DEPUTY COMMISSIONER MORRIS:** That's not
26 (inaudible). It doesn't just say what they were.

27 **INMATE BROWN:** I just thought that was part of the

1 (inaudible).

2 **DEPUTY COMMISSIONER MORRIS:** Yes, okay.

3 (Inaudible) watch your step. (Inaudible)

4 **INMATE BROWN:** (Inaudible)

5 **DEPUTY COMMISSIONER MORRIS:** I'm also looking at
6 the psych report so before I leave the post-conviction
7 factors (inaudible) is there anything else that you've
8 done since you've been incarcerated that you need to
9 share with this Board (inaudible)?

10 **INMATE BROWN:** (Inaudible)

11 **DEPUTY COMMISSIONER MORRIS:** Okay. Then let me
12 just review the psych report dated 2/14/02 authored by
13 Joe Reed, (phonetic) staff psychologist. I'm looking at
14 page three and going right to current diagnostic
15 impressions and the psychologist has considered the five
16 axis. Under Axis I he describes you as cocaine and
17 amphetamine abuse in sustained full remission in a
18 controlled environment. Axis II, no contributory
19 personality disorder. Axis III, no contributory physical
20 disorder. Under Axis IV (inaudible) incarceration
21 (inaudible). And under Axis V, that's the global
22 assessment functioning test, and that measured
23 (inaudible) scored a 90, which (inaudible). The
24 psychologist goes on to say that your current level of
25 insight and judgment (inaudible) are good. And he
26 (inaudible) a positive relation and successful adaptation
27 to community living. Under Section 14 assessment of

1 dangerousness the psychologist states that (inaudible)
2 within a controlled (inaudible) is considered
3 (inaudible). The low average relative to this level
4 (inaudible). This conclusion was based on certain
5 factors. He says on the one hand you have received four
6 115s since '92, you have received three 128s and the last
7 was March (inaudible). In addition to that he says that
8 you have received no disciplinaries since (inaudible) in
9 over four years. (Inaudible).

10 **INMATE BROWN:** That's not the updated one.

11 **DEPUTY COMMISSIONER MORRIS:** No, that's not an
12 updated --

13 **INMATE BROWN:** I have an updated psych report.

14 **DEPUTY COMMISSIONER MORRIS:** Yeah, because you
15 (inaudible) those four years away and you got a April 20,
16 '03 disciplinaries. However you are currently on a
17 three-year one of being disciplinary free. (Inaudible).
18 And let me just kind of for the record state that the
19 June 14, 2002 evaluation is authored by Bill Uikas (sic),
20 U-I-K-A, staff psychologist. And what he does in this
21 2002 report is reference the June 19, 1999 report. So
22 these statements that I've read, the diagnostic
23 impression as well as the assessment of dangerous is all
24 in the 1999 report.

25 **ATTORNEY CHRISTENSEN:** Commissioner, do you not
26 have the current report dated June 1st, 2006? It's in my
27 packet of (inaudible).

1 **DEPUTY COMMISSIONER MORRIS:** (Inaudible) note
2 here.

3 **ATTORNEY CHRISTENSEN:** I also have (inaudible) to
4 me?

5 **DEPUTY COMMISSIONER MORRIS:** Let me see what I
6 have in the C file, hold on.

7 **ATTORNEY CHRISTENSEN:** All right.

8 **DEPUTY COMMISSIONER MORRIS:** You have a new copy
9 of the C file. (Inaudible) I didn't notice that
10 (inaudible) 2002.

11 **ATTORNEY CHRISTENSEN:** (Inaudible) Dr. Newcomber,
12 (phonetic) (inaudible) document.

13 **DEPUTY COMMISSIONER MORRIS:** (Inaudible)

14 **ATTORNEY CHRISTENSEN:** Is it in your pack,
15 Commissioner?

16 **PRESIDING COMMISSIONER PORTER:** Yes. (Inaudible)

17 **DEPUTY COMMISSIONER MORRIS:** Okay, my packet
18 (inaudible) with his document. All right, let me start
19 this psych evaluation all over again for the transcriber.
20 What I'm going to do is talk about a July 2006, or June
21 2006 psych evaluation authored by Newcomber. (Inaudible)
22 full diagnostic impressions. Axis I, he indicates no
23 known disorder and with Axis II no personality disorder.
24 Axis III, no physical disorder. Under Axis IV it talked
25 about the life term and (inaudible). And Axis V it
26 talked about a GAF score of 90. Okay, under Section 14
27 on page three under assessment of dangerousness the

1 psychologist talks about the (inaudible) of dangerous
2 behavior in the institution, speaks to the fact that the
3 inmate received a 4303 disciplinary as battery
4 (inaudible). Talks about the fact that you're
5 (inaudible). And he also speaks that you do not appear
6 to have anger management issues at this time and as a
7 result (inaudible). Going to Section three he makes an
8 assessment as relates to prediction or expectation, he
9 says (inaudible). He talked about the measurement of
10 (inaudible) global assessment functioning test and that
11 last thing (inaudible) paragraph the psychologist states
12 that (inaudible) appears to be below average in terms of
13 dangerousness in an institution setting and (inaudible).
14 Here under Section C, paragraph C (inaudible) states that
15 at this time (inaudible) there are no significant visible
16 factors in this case. On reading that it also reminded
17 (inaudible) cocaine and drug abuse (inaudible). Under
18 Section 14 clinical observation and recommendations
19 (inaudible) talks about (inaudible). Those are
20 statements made by the psychologist. Having heard those
21 statements made by the doctor (inaudible) or anything
22 that you want to add to that (inaudible)?

23 **ATTORNEY CHRISTENSEN:** Okay, really the agreement
24 is just that. I also would point out the divorce he was
25 under (inaudible). And that because of the inmate's age,
26 Mr. Brown is age 53, (inaudible) are paroled over the age
27 of 55 there is only a 1.4 percent rate of recidivism.

1 And for the lifers, which have been here in prison the
2 rate is even lower than (inaudible) I think that's
3 fantastic.

4 **DEPUTY COMMISSIONER MORRIS:** Okay, Mr. Brown we've
5 covered a lot of materials. Is there anything else
6 that's specific post-prediction factors that was
7 (inaudible) since you came here, anything else that we
8 need to talk about at this point?

9 **INMATE BROWN:** I don't believe so.

10 **DEPUTY COMMISSIONER MORRIS:** (Inaudible) back to
11 the Commissioner.

12 **PRESIDING COMMISSIONER PORTER:** Thank you. Tell
13 the Board some of your parole plans. Mr. Brown, if you
14 are released where are you going to live?

15 **INMATE BROWN:** With my daughter in (inaudible).

16 **PRESIDING COMMISSIONER PORTER:** Okay, where's
17 that?

18 **INMATE BROWN:** That's in Oakland. (phonetic) I
19 was going to live with my wife but she had a bad car
20 accident and (inaudible). She's working everything out
21 (inaudible) situation (inaudible). So we're changing my
22 plans from her to my daughter.

23 **PRESIDING COMMISSIONER PORTER:** Would you change
24 it to whether or not they've got self-help programs for
25 NA or AA, things like that around the neighborhood?

26 **INMATE BROWN:** Well, I hadn't checked into them
27 but I know they do.

1 **PRESIDING COMMISSIONER PORTER:** How do you know?

2 **INMATE BROWN:** Well, I had a package that I asked
3 for from pre-release. And it had a list of all the
4 programs available out her. I explained to them I was a
5 lifer and that I would like to know what kind of options
6 I'd have when I got out in the community. So they sent
7 me a package of some of the programs.

8 **PRESIDING COMMISSIONER PORTER:** Okay.

9 **INMATE BROWN:** I haven't contacted any of the
10 programs (inaudible).

11 **PRESIDING COMMISSIONER PORTER:** Don't you think
12 that's something you need to do since your offense was
13 (inaudible), you were involved in these, you know, drugs
14 and alcohol.

15 **INMATE BROWN:** Yeah, because of if I don't -- if I
16 start using again I'm (inaudible), I know that. So
17 (inaudible) --

18 **PRESIDING COMMISSIONER PORTER:** (Inaudible)
19 parole. And what about employment, what do you plan on
20 doing?

21 **INMATE BROWN:** Well, I plan on welding. As far as
22 to go back to the community to start out (inaudible).
23 It's kind of hard on the (inaudible). I (inaudible) job
24 offers in there (inaudible).

25 **PRESIDING COMMISSIONER PORTER:** Oh, you do?

26 **INMATE BROWN:** Uh-huh.

27 **PRESIDING COMMISSIONER PORTER:** Let me see.

1 **INMATE BROWN:** They were from the last time I went
2 to the Board. I held (inaudible) --

3 **PRESIDING COMMISSIONER PORTER:** From the last
4 hearing?

5 **INMATE BROWN:** -- yeah, the last hearing. I mean
6 it's the same documents but I haven't had them updated.

7 **PRESIDING COMMISSIONER PORTER:** You've got to have
8 them updated.

9 **INMATE BROWN:** (Inaudible)

10 **PRESIDING COMMISSIONER PORTER:** And how do you
11 plan on getting around, transportation (inaudible)?

12 **INMATE BROWN:** Well, I'll probably take the bus
13 (inaudible).

14 **PRESIDING COMMISSIONER PORTER:** Got any bus
15 schedules? Do you know when the buses run or anything?

16 **INMATE BROWN:** No.

17 **PRESIDING COMMISSIONER PORTER:** Okay. So it seems
18 like you've got a little work you need to be doing here.
19 So, now your daughter's (inaudible) to support you in any
20 kind of way until you get on your feet?

21 **INMATE BROWN:** Oh yeah. They have a four-bedroom
22 home, and they both, she and her husband work. She'll be
23 a R.N. within the year but she still works for
24 (inaudible) administration. And (inaudible) and her
25 husband makes his living (inaudible) cars.

26 **PRESIDING COMMISSIONER PORTER:** All right, give me
27 a minute.

1 **ATTORNEY CHRISTENSEN:** Commissioner, can I just
2 ask one more question?

3 **PRESIDING COMMISSIONER PORTER:** Yes.

4 **ATTORNEY CHRISTENSEN:** That (inaudible) lived a
5 year here but never appeared (inaudible)?

6 **INMATE BROWN:** No, I don't think so but I could
7 check into it. (Inaudible) they weren't local
8 (inaudible). And I've never had any reason (inaudible).

9 **ATTORNEY CHRISTENSEN:** Okay.

10 **PRESIDING COMMISSIONER PORTER:** And then let's go
11 to some of your letters. I do have a letter here from
12 Barbara Terra. (phonetic) Who is she?

13 **INMATE BROWN:** A friend of the family's.

14 **PRESIDING COMMISSIONER PORTER:** All right. She
15 sends you a letter of support. She thinks that you would
16 be a wonderful asset to the community, and not only for
17 your family but for the general public. She's supportive
18 of you and she's supportive of your release. And that's
19 the only one I could find. Do you have any more?

20 **INMATE BROWN:** No, not recent ones. The last
21 hearing I had quite a few in there, and I thought they
22 would still be good. I didn't understand that they had
23 to be updated like that.

24 **PRESIDING COMMISSIONER PORTER:** Yeah.

25 **INMATE BROWN:** I have them from my daughters and
26 my family. My mother's (inaudible) and (inaudible)
27 brothers and sisters. And they've all sent support

1 letters to the files.

2 **PRESIDING COMMISSIONER PORTER:** Okay. And we sent
3 out Penal Code section number 3042 notices. And those
4 notices go to any agencies have a direct interest in your
5 case, like at least one went to the District Attorney's
6 office and the Sheriff's office. And we do have a
7 response from the District Attorney's office. It is a --
8 I'm not going to read it all. It's a (inaudible) one,
9 two, three, four-page letter and basically they're not
10 supportive of your release. And they feel that if
11 released you would be a danger to society. And they feel
12 at this point that they are definitely not supportive of
13 your release (inaudible). And then (inaudible). So I'm
14 going to ask the Deputy Commissioner if he has any
15 questions of you regarding of the subjects that we talked
16 about.

17 **DEPUTY COMMISSIONER MORRIS:** I've got one
18 question. It has to do with the (inaudible). Did you
19 know the victim's sister, or what was your relationship
20 with her?

21 **INMATE BROWN:** I used to (inaudible).

22 **DEPUTY COMMISSIONER MORRIS:** Who?

23 **INMATE BROWN:** (Inaudible).

24 **DEPUTY COMMISSIONER MORRIS:** (Inaudible)?

25 **INMATE BROWN:** I used to (inaudible).

26 **DEPUTY COMMISSIONER MORRIS:** Does she owe you
27 money?

1 **INMATE BROWN:** She owed me money. She was the one
2 that owed me the money.

3 **DEPUTY COMMISSIONER MORRIS:** Do you recall the
4 conversation we had where the relation (inaudible) you
5 said, or it inferred in the hearing that she was the one
6 that owed you money, not her brother.

7 **INMATE BROWN:** Right, she owed me the money.

8 **DEPUTY COMMISSIONER MORRIS:** You didn't say that
9 before.

10 **INMATE BROWN:** (Inaudible) It started out with her
11 owing me money.

12 **DEPUTY COMMISSIONER MORRIS:** She owes you money.
13 How'd the brother get involved?

14 **INMATE BROWN:** He got involved in it, in the
15 argument because of his sister.

16 **DEPUTY COMMISSIONER MORRIS:** Okay, how --

17 **INMATE BROWN:** (Inaudible) they lived together. I
18 gave them money to help pay the rent.

19 **DEPUTY COMMISSIONER MORRIS:** All right, you
20 understand how just by me asking this additional question
21 it changes (inaudible). So she owes you the money and
22 you're trying to get your money from her. The brother
23 gets involved and there's some sort of a fight, and two
24 or three other males are around but nobody appears to be
25 fighting. Nobody tries to stop the fight.

26 **INMATE BROWN:** (Inaudible) we started (inaudible)
27 we had seven.

1 **DEPUTY COMMISSIONER MORRIS:** Why did you
2 (inaudible) time?

3 **ATTORNEY CHRISTENSEN:** (Inaudible).

4 **INMATE BROWN:** No, there was other people involved
5 in the fight. I told you (inaudible) there was other
6 people involved in the fight in the house.

7 **DEPUTY COMMISSIONER MORRIS:** Why'd you bring the
8 gun with you in that house?

9 **INMATE BROWN:** I always carried a gun.

10 **DEPUTY COMMISSIONER MORRIS:** (Inaudible)?

11 **INMATE BROWN:** No, I just carried a gun because
12 that was the lifestyle I was living. I always had to
13 carry pistols.

14 **DEPUTY COMMISSIONER MORRIS:** All right
15 (inaudible).

16 **PRESIDING COMMISSIONER PORTER:** Mr. Amrie,
17 (phonetic) do you know him? Did he tell you about
18 (inaudible)?

19 **INMATE BROWN:** (Inaudible).

20 **PRESIDING COMMISSIONER PORTER:** A-M-R-I-E.

21 **INMATE BROWN:** (Inaudible).

22 **PRESIDING COMMISSIONER PORTER:** Basically, he
23 (inaudible) fight with him and you busted into his house.
24 Did you ever hit anybody in the head with a hammer?

25 **INMATE BROWN:** No.

26 **PRESIDING COMMISSIONER PORTER:** You never hit
27 anybody in the head or the elbow, or the elbows and

1 knees?

2 **INMATE BROWN:** No.

3 **PRESIDING COMMISSIONER PORTER:** Did you ever throw
4 a burning iron at (inaudible)?

5 **INMATE BROWN:** No. I know what case we're talking
6 about and I didn't do any of that.

7 **PRESIDING COMMISSIONER PORTER:** Can you tell me
8 about that case, sir?

9 **INMATE BROWN:** I was (inaudible) case -- I'm
10 trying to remember it now. I really can't recall much of
11 it. I remember that case, I remember --

12 **PRESIDING COMMISSIONER PORTER:** This case happened
13 two years before your commitment case.

14 **INMATE BROWN:** Right. And there was a fight in
15 the house I was at. But it wasn't -- I didn't do any of
16 those things to that guy.

17 **PRESIDING COMMISSIONER PORTER:** What happened?

18 **INMATE BROWN:** That's why I never got arrested for
19 it. Okay, I was there.

20 **PRESIDING COMMISSIONER PORTER:** What happened?

21 **INMATE BROWN:** (Inaudible) came in there and guys
22 got into it, and the guys found out that he was child
23 molester. And so we started beating on him in the house
24 (inaudible). I was there but as you see I never got
25 arrested for it. (Inaudible) this case came up --

26 **PRESIDING COMMISSIONER PORTER:** Okay.

27 **INMATE BROWN:** It was like two years before that

1 or a year and half before that.

2 **PRESIDING COMMISSIONER PORTER:** Right. You were
3 charged in this though.

4 **INMATE BROWN:** Yeah, in the end. Yeah, because I
5 just took a guilty to get out of the county jail. I
6 didn't want to stay in (inaudible) I just went to the
7 court hearing on the murder case and I was wore out. So
8 I went ahead and took that guilt. And the other case
9 we're talking about with the controlled substance, when I
10 had a drug diversion and the gun, I took that guilty just
11 to get out of the county jail. But I never, I didn't do
12 any of that that was in that statement and that's why
13 they'd never arrested me for two years. They questioned
14 me (inaudible) and I told them I'd been in the house but
15 I hadn't done those things to that guy.

16 **PRESIDING COMMISSIONER PORTER:** Um-hmm.

17 **INMATE BROWN:** And they were looking for the guys
18 that had done it.

19 **PRESIDING COMMISSIONER PORTER:** You don't even
20 know his name?

21 **INMATE BROWN:** I knew it was Dave that was all I
22 knew. And that's all the victim knew too. I mean that
23 should be in there but like I said I took them guilts in
24 there just because I was --

25 **PRESIDING COMMISSIONER PORTER:** But you didn't
26 know the victim's name? Did you know the victim's name?

27 **INMATE BROWN:** I cannot remember, I can't remember

1 his name. I had just met him.

2 **PRESIDING COMMISSIONER PORTER:** Amrines,
3 (phonetic) that's --

4 **INMATE BROWN:** Amrines.

5 **PRESIDING COMMISSIONER PORTER:** That's A-M-R-I-N-
6 E-S (inaudible). Okay, we're going to Counsel now and
7 see if she -- you got any questions of your client,
8 Counsel?

9 **ATTORNEY CHRISTENSEN:** I do. So how would you
10 avoid getting into arguments (inaudible)?

11 **INMATE BROWN:** Well, I've just gotten older and
12 I've learned how to avoid complications that (inaudible).

13 **ATTORNEY CHRISTENSEN:** Okay. (Inaudible) or would
14 you walk away from (inaudible)?

15 **INMATE BROWN:** The best way is just to walk away
16 from them.

17 **ATTORNEY CHRISTENSEN:** Are there any other self-
18 help plans that (inaudible)?

19 **INMATE BROWN:** Well, I'm thinking I'll take more
20 anger management (inaudible) and I'm staying with AA. I
21 tried NA and with AA it was a little older process,
22 that's why I went there instead.

23 **ATTORNEY CHRISTENSEN:** Did you take full
24 responsibility for this crime?

25 **INMATE BROWN:** Yes, (inaudible).

26 **ATTORNEY CHRISTENSEN:** What are you thinking that
27 (inaudible) did on (inaudible)?

1 **INMATE BROWN:** (Inaudible) I think that his
2 sister's (inaudible). I know what it does to her, we're
3 pretty close.

4 **ATTORNEY CHRISTENSEN:** You were on probation when
5 you (inaudible) crime (inaudible)on parole (inaudible).

6 **INMATE BROWN:** Well, I'm going to do (inaudible).
7 I mean I'm going to do whatever I can to stay out,
8 (inaudible) NA or AA for the rest of my life and
9 (inaudible) programs that's I'm going to do.

10 **ATTORNEY CHRISTENSEN:** (Inaudible) with you
11 (inaudible).

12 **INMATE BROWN:** Well, I've taken care of one of the
13 (inaudible). (Inaudible) my family. (Inaudible).

14 **ATTORNEY CHRISTENSEN:** I don't have any more
15 questions (inaudible).

16 **PRESIDING COMMISSIONER PORTER:** Thank you Counsel,
17 and would you like to make a final statement?

18 **ATTORNEY CHRISTENSEN:** I would love to. Mr. Brown
19 has accomplished a great deal (inaudible) before he even
20 came to prison. And we know that there are positive
21 things going for him. Number one, he can get a
22 (inaudible). He has a very good work history and
23 (inaudible). He was also a union member. He was not the
24 member of gang before he came to prison and he now has a
25 (inaudible) before but (inaudible). (Inaudible) positive
26 change (inaudible). So (inaudible) in two prisons he has
27 completed a vocational trade, that's welding. He also

1 has other skills, machine shop and plumbing. The psych
2 report is very positive (inaudible). Actually this is
3 the second positive psych report. (Inaudible) the one in
4 1991 was also (inaudible). He is three years away from
5 his last 115 (inaudible). But I'm (inaudible) 115s. He
6 has learned through Project Change and (inaudible). He
7 has a stable, (inaudible) marriage and plans to live with
8 his daughters and (inaudible) skills that involve
9 (inaudible). So I think (inaudible) successful parole
10 and (inaudible) favorably on this man today.

11 **PRESIDING COMMISSIONER PORTER:** Thank you
12 Counselor. Mr. Brown would you like to make a final
13 comment?

14 **INMATE BROWN:** No, I think we've pretty much
15 covered everything.

16 **PRESIDING COMMISSIONER PORTER:** Okay, we will now
17 recess for deliberation.

18 **DEPUTY COMMISSIONER MORRIS:** For the transcriber,
19 we will be turning the tape over now.

20 **R E C E S S**

21 **--oo--**

22

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1

CALIFORNIA BOARD OF PAROLE HEARINGS

2

D E C I S I O N

3

PRESIDING COMMISSIONER PORTER: In the manner of
4 Mr. Charles Brown, CDC number E as in Edward 25371, the
5 panel has reviewed all the information received from the
6 public and relied on the following circumstances in
7 concluding that the prisoner is not suitable for parole
8 and would pose an unreasonable risk of danger to society,
9 or a threat to public safety if released from prison.

10 The offense was carried out in an especially cruel and
11 callous manner. Multiple victims were attacked and
12 killed in the same instance. Basically there were not
13 only the victim that was killed, there were children and
14 women in the room. And you would not let them intervene
15 or stop it. You had a partner there, he wasn't just a
16 hitchhiker, he was actively participating and keeping
17 everybody at bay while the victim took a beating. The
18 offense was carried out in a dispassionate and calculated
19 manner such as an execution style murder.. The coroner's
20 report said that gun was about a quarter of an inch from
21 his head when he was shot. The victim was abused and
22 defiled during the offense. The offense was carried out
23 in a manner, which demonstrates an exceptionally callous
24 disregard for human suffering. This man was beaten;
25 dragged to his own room, beat some more, stabbed and then
26 he was shot. The motive for the crime was very trivial

1 in relation to the offense. The only motive sir, you
2 come up with is that you guys had a rocky relationship.
3 You had fights in the past, so that's very trivial for
4 the offense that committed. The prisoner has on previous
5 occasion inflicted serious injuries on victims. The
6 prisoner has an escalating pattern of violence. The
7 prisoner has failed previous grants of probation and
8 cannot be counted upon to avoid criminal elements. The
9 prisoner has failed to profit from society's previous
10 attempts to correct his criminality such as adult
11 probations. You were already on probation when this
12 occurred, sir. The prisoner has failed, the prisoner has
13 programmed in a limited manner while incarcerated.
14 You've had very little self-help programming, sir. And
15 you need a lot of it. The prisoner has failed to
16 demonstrate evidence of positive change citing the
17 misconduct while incarcerated. He has a total of four
18 128As. The last one was February of 2000. (Inaudible)
19 You've had a total of five 115s and you've had one since
20 your previous Board hearing. And that was for battery
21 with serious injury and basically you (inaudible). The
22 prisoner lacks realistic parole plans. You do not have
23 acceptable employment plans. You need to firm up in your
24 parole plans. Nevertheless, the prisoner should be
25 commended for completing his GED in 1991, that's very
26 good positive work. You have completed your vocation in
27 **CHARLES BROWN E-25371 DECISION PAGE 2 7/24/06**

1 July of 2002, welding. You had AA participating in 2006,
2 when (inaudible) it was this year, 2006?

3 **INMATE BROWN:** 2006.

4 **PRESIDING COMMISSIONER PORTER:** And basically
5 you were involved in Project Change in 2004. However,
6 these positive aspects in your behavior does not outweigh
7 the factors of (inaudible). In a separate decision the
8 hearing panel finds that it is not reasonable to expect
9 that parole will be permitted at a hearing for the
10 following four years. You have a four-year denial, sir.
11 The offense was carried out in an especially cruel and
12 callous manner, multiple victims were attacked and
13 killed. The offense was carried out in a dispassionate
14 and calculated manner such as in an execution-style
15 murder. The victim was abused during the offense. And
16 the offense was carried out in a manner, which
17 demonstrates an exceptionally callous disregard for human
18 suffering. The motive for the crime was inexplicable and
19 trivial in relation to the offense. And sir, you have
20 inconsistencies in your story. You know, I don't think
21 you were being very truthful with the panel. I would ask
22 you about certain crimes, you wouldn't remember. That's
23 fine but when I would start mentioning names then you
24 could (inaudible) truthful about that. And you were also
25 present; if you weren't involved in it you were present
26 when another man was beaten in the head with a hammer.

1 He was beaten in the head with a hammer; he was beaten on
2 his elbows and his knees. And he was struck several
3 times with guns, pipes and other (inaudible). And he was
4 beat and tortured with a burning iron. So sir, I do
5 believe that you've got to start being more truthful with
6 the panel about what you know and what you participated
7 in so we can evaluate your insight regarding the crime.
8 The prisoner has failed on previous occasions, and has
9 inflicted serious injury upon a victim. The prisoner has
10 an escalating pattern of violence. The prisoner has
11 failed previous grants of probation. The prisoner has
12 failed to profit from society's repeated attempts to
13 break his criminality since (inaudible) probation.
14 That's going to conclude the reading of the decision.
15 Deputy Commissioner do you have anything to add?

16 **DEPUTY COMMISSIONER MORRIS:** No, but just in
17 closing I want to say, Mr. Brown I reviewed many years of
18 documentation hearings and prior (inaudible). All of
19 those (inaudible) talked about programming, they talked
20 about self-help (inaudible) and they talked about the
21 need to be disciplinary free. (Inaudible) I also
22 question your ability to (inaudible) and your Counsel
23 talked with me about that. And I understand the
24 statistics (inaudible). (Inaudible) you received your
25 last serious 115 (inaudible) behavior identical to
26 (inaudible). That behavior also was subject to a

71

1 (inaudible) very short (inaudible). So in closing I'll
2 say you have a bunch of work to do. (Inaudible). I wish
3 you good luck, sir.

4 **INMATE BROWN:** All right, thank you.

5 **PRESIDING COMMISSIONER PORTER:** That concludes
6 this hearing. Success and good luck to you, sir.

7 INMATE BROWN: All right.

8 ATTORNEY CHRISTENSEN: (Inaudible).

A D J O U R N M E N T

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23 PAROLE DENIED FOUR YEARS

NOV 21 2006

24 THIS DECISION WILL BE FINAL ON

25 YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT DATE,
26 THE DECISION IS MODIFIED.

27 CHARLES BROWN E-25371 DECISION PAGE 5 7/24/06

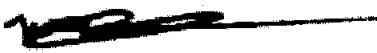
CERTIFICATE AND

DECLARATION OF TRANSCRIBER

I, MYRA SEVERTSON, a duly designated transcriber,
NORTHERN CALIFORNIA COURT REPORTERS, do hereby declare
and certify under penalty of perjury that I have
transcribed tape which totals one in number and covers a
total of pages numbered 1 through 71, and which recording
was duly recorded at the CORRECTIONAL TRAINING FACILITY,
SOLEDAD, CALIFORNIA in the matter of the SUBSEQUENT
PAROLE CONSIDERATION HEARING of CHARLES BROWN, CDC number
E-25371, on JULY 24, 2006, and that the foregoing pages
constitute a true, complete, and accurate transcription
of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party
in the above-captioned matter and have no interest in the
outcome of the hearing.

Dated October 26, 2006 at Sacramento County,
California.



Myra Severtson
Transcriber
**NORTHERN CALIFORNIA COURT
REPORTERS**

1 CALIFORNIA BOARD OF PRISON TERMS

2 D E C I S I O N

3 DEPUTY COMMISSIONER MCBEAN: Wait a minute.

4 Okay.

5 PRESIDING COMMISSIONER LAWIN: Thank you.

6 We're back on record in the hearing for Charles
7 Brown and all parties have returned to the room.
8 The Panel has reviewed all information received
9 from the public and relied on the following
10 circumstances in concluding that the inmate is not
11 suitable for parole and would pose an unreasonable
12 risk of danger to society or a threat to public
13 safety if released from prison. The commitment
14 offense was the murder of Michael Konz. He was
15 stabbed -- first beaten, then stabbed, then shot
16 to death, this after the inmate and Mr. Konz had
17 had an ongoing -- had had many confrontations with
18 an ongoing dispute over money that was owed to the
19 inmate. And ultimately, on the night of April
20 23rd, 1988 it culminated in the death of Mr. Konz
21 at a mutual friend's home where the two
22 encountered one another. The inmate, according to
23 the records, and the victim got into a physical
24 altercation where Mr. Brown hit Mr. Konz, that
25 thus constitutes the beating. Then that moved or
26 escalated to the point where Mr. Brown produced

1 the knife or used the knife that he had, and then
2 ultimately the gun that he had with him he used
3 and shot Mr. Konz with. This offense shows a
4 disregard for the life and suffering of another.
5 And the motive for the crime is really trivial in
6 that Mr. Konz lost his life over a debt, monetary
7 debt. The inmate had a history of criminality.
8 He had been detained on a number of occasions.
9 Ultimately, he had been sent as a juvenile to
10 juvenile hall for taking a vehicle without owner's
11 consent. He was again detained for taking a
12 vehicle without owner's consent in 1969 and
13 released to his parents, so juvenile probation
14 essentially. As an adult, he was arrested and
15 convicted for grand theft person and served some
16 time in county jail, a matter of days perhaps. He
17 also was arrested and convicted of 415 and paid a
18 fine, arrested and convicted for possession of
19 controlled substance, paraphernalia, and
20 possession, manufacture, or sale of dangerous
21 weapon receiving adult probation. Thus, he had
22 failed to benefit from society's previous attempts
23 to correct his criminality, and those attempts
24 included juvenile hall, juvenile probation, adult
25 probation, and county jail. He also had an
26 unstable social history in that he was a user of

1 illegal drugs on the outside, methamphetamine,
2 marijuana, cocaine. And the inmate has not
3 sufficiently participated in beneficial self-help
4 programs. In terms of institutional behavior, he
5 has had a total of four 115s. The most recent was
6 1998 for grooming. Prior to that, it was 1996,
7 possession of methamphetamine. He has four 128(a)
8 counseling chronos, and the most recent of those
9 was February 2nd of 2000 for failure to report.

10 The Hearing Panel notes that responses to P.C.
11 3042 letters generated opposition to a finding of
12 parole suitability, specifically from the District
13 Attorney's office of Placer County. The inmate
14 does have adequate parole plans. He has places to
15 live, several offers of living arrangements, and
16 he also has a couple of offers of employment. The
17 report by Dr. Joe Reed dated July 2nd, 1999
18 concludes that his violence potential on the
19 outside would be no more than that of the average
20 citizen. The Hearing Panel -- The inmate's to be
21 commended, pardon me, for the fact that he
22 acquired his GED early on and that he worked very
23 hard to acquire his welding certification. Also,
24 he's involved currently in the plumbing program as
25 an apprentice plumber. It's not a vocational
26 program, but he's certainly learning skills in

1 that program and gaining real-life experience.
2 He's also to be commended for the fact that at
3 some point he did spend about six months attending
4 NA meetings. The Panel makes the following
5 findings: That the prisoner needs continued
6 therapy in order to further delve into the
7 causative factors of his participation in this
8 life crime, and to further explore the ways of
9 dealing with stress in a nondestructive manner, of
10 being able to deal with authority, and to be able
11 to stay away from alcohol and drug abuse. The
12 inmate also has gains that are recent, and this
13 would be specifically dealing with his 115s. The
14 fact that he's been disciplinary-free for four
15 years that would be recent gain. He must
16 demonstrate an ability to maintain those gains
17 over a longer period of time. The Panel, in a
18 separate decision, concluded that the inmate has
19 been convicted of murder and it is not reasonable
20 to expect that parole would be granted at a
21 hearing during the following two years. The
22 specific reasons for this two-year denial are as
23 follows: First is the commitment offense which
24 was carried out in a manner that demonstrates a
25 disregard for human suffering. Michael Konz was
26 beaten, stabbed, and shot to death. The motive

1 for the crime was trivial; it was over a debt.
2 And the second would be the inmate's prior history
3 of criminality which included detentions as a
4 juvenile, went to juvenile hall, was on probation
5 for taking a vehicle without owner's consent, both
6 of them were. And then as an adult for grand
7 theft person, for possession of controlled
8 substance, paraphernalia, possession, manufacture,
9 or sale of dangerous weapon. Also, his past
10 unstable social history which included drug use.
11 Third, would be the lack of sufficient programming
12 in the institution, and that goes, Mr. Brown, to
13 your lack of participation in self-help. The fact
14 that you don't think that you need any assistance
15 is troubling because we all learn something
16 positive from self-help programs. You have a very
17 recent gain as far as your drug use goes.
18 There's, you know, a number of instances where you
19 explain that you were with a group of people or
20 amongst a group of people that were detained in
21 the institution while they investigated, for
22 instance, trafficking. That tied in with your
23 possession of methamphetamine is troubling, so
24 you're going to have to put distance between
25 yourself and your 115s. You've got to show the
26 Board that you can live by the rules of the
27 CHARLES BROWN E-25371 DECISION PAGE 5 12/3/02

1 institution. So the Panel finds that a longer
2 period of incarceration is required before we can
3 find you suitable for parole. During the course
4 of the next two years, we recommend that you
5 remain disciplinary-free. To be serious, you've
6 got to come back here with not even a new 128.
7 You need to be squeaky clean. Also, participate
8 in whatever self-help becomes available to you. I
9 would recommend that you look into Impact and that
10 you look into Parenting because those are just two
11 that I know that are at this institution. You
12 have to get on a waiting list for everything, but
13 you're probably going to get something positive
14 out of either one of them. But I'm not trying to
15 direct you just to those two. Anything that
16 becomes available you should participate in. We
17 want to see that you're not the same person you
18 were when you came in and one of the ways to do
19 that is through education, and if there's no other
20 way to educate you than through self-help then
21 that's the way it will have to be. And you've
22 done a good job in terms of welding. We just
23 recommend that you continue to upgrade as you can
24 learning new skills, which you're doing in
25 plumbing. You'll need to get new letters again
26 from your family in two years, similar letters to
27 CHARLES BROWN E-25371 DECISION PAGE 6 12/3/02

1 what you have this time. And I would recommend
2 that you keep a copy and bring a copy with -- or
3 keep the originals and bring the originals with
4 you and give a copy of them to your counselor so
5 that you have them here at the hearing. And I
6 wish you good luck.

7 **INMATE BROWN:** Okay, thank you.

8 **PRESIDING COMMISSIONER LAWIN:** Commissioner?

9 **DEPUTY COMMISSIONER MCBEAN:** Good luck to
10 you. Thank you.

11 **INMATE BROWN:** Thank you.

12 **PRESIDING COMMISSIONER LAWIN:** And this is
13 your copy.

14 **INMATE BROWN:** Okay.

15 **ATTORNEY TARDIFF:** Thank you.

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25 **PAROLE DENIED TWO YEARS**

26 **EFFECTIVE DATE OF THIS DECISION**

DEC 26 2002

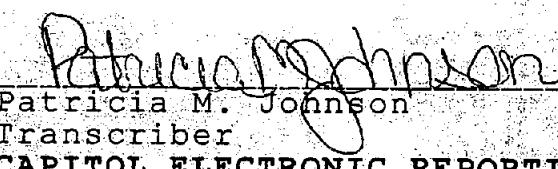
27 **CHARLES BROWN E-25371 DECISION PAGE 7 12/3/02**

CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, PATRICIA M. JOHNSON, a duly designated transcriber, CAPITOL ELECTRONIC REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 through 57, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, at SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of CHARLES BROWN, CDC No. E-25371, on DECEMBER 3, 2002, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape(s) to the best of my ability.

I hereby certify that I am a disinterested party in the above-captioned matter and have no interest in the outcome of the hearing.

Dated December 12, 2002, at Sacramento County, California.



Patricia M. Johnson
Transcriber
CAPITOL ELECTRONIC REPORTING

BOARD OF PRISON

STATE OF CALIFORNIA

LIFE PRISONER PAROLE CONSIDERATION WORKSHEET

 INITIAL HEARING SUBSEQUENT HEARING

PRISONER'S NAME BROWN, CHARLES	CDC NUMBER E-25371
DATE OF HEARING TUESDAY, DECEMBER 3, 2002 @ 11:00 a.m.	LOCATION CORRECTIONAL TRAINING FACILITY - SOLEDAD

LEGAL STATUS

DATE RECEIVED 08-08-1989	DATE LIFE TERM STARTS (IF DIFFERENT) 12-08-89	COUNTY PLACER
OFFENSE MURDER 2nd		CASE NUMBER 1259
COUNT NUMBER(S) 01	PENAL CODE SECTIONS(S) VIOLATED P187	
TERMS 15 TO LIFE PLUS 2 YRS	MEPD 05-06-2000	

OTHER COMMITMENT OFFENSES OR STAYED COUNTS

STAYED	OFFENSE	CODE SECTION	COUNTY	CASE NUMBER	COUNT NUMBER
<input type="checkbox"/>	USE WPN	P12022.5	PLACER	1259	01
<input type="checkbox"/>	ADW	P245(A)(2)	PLACER	1636	01
<input type="checkbox"/>	POSS WPN	P 12020(A)	PLACER	1635	01

PRESENT AT HEARING

PANEL MEMBER <i>LAWIN</i>	PANEL MEMBER <i>M C BEAN</i>	PANEL MEMBER
------------------------------	---------------------------------	--------------

OTHERS PRESENT

 PRISONER (IF ABSENT,
WHY)

MARIAN TARDIFF

 ATTORNEY

NO REPRESENTATIVE

 DEPUTY D. A.

COUNTY OF PLACER

 OTHERS:

STATEMENT OF FACTS

 THE HEARING PANEL INCORPORATED BY REFERENCE FROM THE DECISION OF THE HEARING HELD

ON _____

, PAGES _____

THROUGH _____

 THE STATEMENT OF FACT IS QUOTED FROM THE BOARD REPORT, DATED _____

PAGE(S) _____

 QUOTED FROM THE PROBATION OFFICER'S REPORT, PAGE(S) _____

2-4

 QUOTED FROM THE COURT OPINION, PAGE(S) _____

BOARD OF PRISON TERMS

LIFE PRISONER: PAROLE CONSIDERATION
PROPOSED DECISION (BPT §2041)

- I. PAROLE DENIED

Two (2) Years

If this proposed decision denying parole is approved, the Board will send you a copy of the approved decision, including the reasons for denial of parole, within 30 days of the hearing.

- II. PAROLE GRANTED

A. Base Period of Confinement Months

Case No.	Count No.	Offense
----------	-----------	---------

B. Firearm Enhancement. + Months

C. Other Crimes Total + Months

Case No.	Count No.	Offense	mos.
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Case No.	Count No.	Offense	mos.
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Case No.	Count No.	Offense	mos.
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D. Total Term Months

E. Postconviction Credit From _____ To _____ Months
(Date) (Date)

F. Total Period of Confinement. Months

The period of confinement indicated is a tentative decision proposed by this panel. The decision will be reviewed pursuant to BPT §2041, and, if approved, a copy of the approved decision will be sent to you within 30 days. At that time appropriate pre-prison credits will be applied and a parole release date computed.

You will not engage in any conduct specified in BPT §2451. Such conduct may result in rescission or postponement of your parole date.

- III. If the proposed decision denying or granting parole is disapproved, you will receive a copy of the proposed decision and the reasons for disapproval. You will then receive a copy of the modified decision or will be scheduled for a new hearing, as appropriate.

PANEL HEARING CASE

Name	<i>Sharon Lawin</i>	Date	<i>12/3/02</i>
Name	<i>Dawn Bear</i>	Date	<i>11</i>
Name		Date	

NAME	CDC NUMBER	INSTITUTION	HEARING DATE
<i>Brown, Charles</i>	<i>E25371</i>	<i>CTF Soledad</i>	<i>12-3-02</i>

BOARD OF PRISON TERMS
LIFE PRISONER DECISION FACE SHEET

mcfarlan
STATE OF CALIFORNIA

PERIOD OF CONFINEMENT

(RECORDS OFFICER USE ONLY)

YR MO DAY

Adjusted Period of Confinement.....

+89 8 8

Date Life Term Begins.....

+

At Large Time.....

=

PAROLE DATE.....

MISCELLANEOUS

3 YR. DENIAL

Panel recommendations and requests:

Become _____ Remain disciplinary free.

Work towards reducing his/her custody level.

Upgrade _____ vocationally _____ educationally

Participate in _____ self-help (and) _____ therapy.

Transfer to _____ Cat. X _____ Cat. T.

FINAL CODE SECTION 3042 NOTICES SENT

(Date) AUGUST 13, 1999

COMMITMENT OFFENSE

187 W/12022.5

MURDER 2ND W/USE F'ARM

(Code Section)

(Title)

1259

01

(Case Number)

(Count Number)

Date Received by CDC 8/8/89	Date Life Term Begins 12/8/89	Controlling MEPD 5/6/00
Type of Hearing <input checked="" type="checkbox"/> INITIAL <input type="checkbox"/> SUBSEQUENT (Hearing No.)	If Subsequent Hearing, Date of Last Hearing	
Department Representative JOY KELLAM TYLER, C & PR		
Counsel for Prisoner RHONDA SKIPPER-DOTTA	Address	
District Attorney Representative	County PLACER	

PAROLE HEARING CALENDAR

This form and the panel's statement at the conclusion of the hearing constitute a proposed decision and order of the Board of Prison Terms. The decision becomes effective when issued following the decision review process.

By:

Presiding (Name)

Charles Brown

Date

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Concurring (Name)

Donna Skipper-Dotta

Date

14

Concurring (Name)

Donna Skipper-Dotta

Date

1999

NAME BROWN, CHARLES	CDC NUMBER E-25371	INSTITUTION CTF	CALENDAR 7/99	HEARING DATE 12/14/99
------------------------	-----------------------	--------------------	------------------	--------------------------

BPT DECISION REVIEW CORRECTIVE MEET

INMATE:

Charles Brown

CDC NUMBER:

S-25371

TYPE OF HEARING:

Initial

DATE OF HEARING:

12-14-99

A review of the hearing transcript and parole decision by the Decision Review Unit (DRU) has revealed the following error(s):

Page 1, Line 8, forgot Count #

Recommendation: To correct the error(s) set forth above in the hearing transcript, read the following language into the record at the next scheduled parole consideration hearing:

Page 1, Line 8, after Case # 1259,
add "Count 1",

APPROVED BY:

Commissioner/Deputy Commissioner

Date:

[9/93]

PERMANENT ADDENDA

1 CALIFORNIA BOARD OF PRISON TERMS

2 D E C I S I O N

3 PRESIDING COMMISSIONER ORTEGA: The time now is
4 approximately 9:25 a.m. The Panel has reviewed all
5 the information received from the public and has
6 relied on the following circumstances in concluding
7 that the prisoner is not suitable for parole and that
8 he would pose an unreasonable risk of danger to
9 society or a threat to public safety if released from
10 prison. The number one and most compelling reason was
11 the commitment offense. It was carried out in an
12 especially cruel and callous manner and it was carried
13 out in a dispassionate and calculated manner. The
14 motive for the crime was inexplicable or very trivial
15 in relation to the offense. These conclusions are
16 drawn from the Statement of Facts wherein the
17 prisoner, apparently, had had a running feud of some
18 type with the victim in this case. And on the night
19 in question, April the 23rd, had gone to a residence
20 where the victim at that time was visiting. During
21 the course of that period of time, the inmate beat the
22 victim with his fists, then stabbed him several times
23 with a knife, and eventually shot him in the head
24 which caused his death. He had a previous record. He
25 had an escalating pattern of criminal conduct and he
26 had a history of unstable or tumultuous relationships

1 with others. He'd failed previous grants of probation
2 and cannot be counted upon to avoid criminality. He
3 also failed to profit from society's previous attempts
4 to correct his criminality. Those attempts did
5 include juvenile probation and "adult" probation and
6 county jail terms. His unstable social history and
7 prior criminality included, by my count, approximately
8 six arrests as a juvenile and some of those arrests
9 included grand theft auto, kidnap, a grand theft
10 person, assault with a deadly weapon, exhibiting a
11 firearm in a rude or threatening manner and malicious
12 mischief. Now, it should be noted that many of those,
13 although they were arrests, were not convictions.
14 They did show an arrest and conviction for the grand
15 theft person. We also noted six adult arrests and
16 those range from assault to battery on a peace
17 officer, malicious mischief, disturbing the peace,
18 receiving known stolen property and numerous charges
19 of weapons violations and also some drug charges.
20 Institutional, we note that the prisoner has not
21 sufficiently participated in beneficial self-help
22 and/or therapy programming. He's also failed to
23 demonstrate evidence of positive change. His
24 misconduct while incarcerated has included, by my
25 count, at least three 128(a)s in 1991, 1995 and 1998;
26 and four 115s, the first one in 8/20 of '92, then one
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1 in '95, one in '96 and then one in 1998. Those are
2 the 115s. We also note in the area of parole plans
3 that the prisoner lacks, at this point in time,
4 realistic parole plans. He does not have viable
5 residential plans in the last ~~county~~ of legal
6 residence and at this time he does not have an
7 acceptable employment plan. We also note that we did
8 receive, as a response to 3042 notices, opposition to
9 a finding of parole suitability, specifically, from
10 the District Attorney's Office of Placer County.

11 Under remarks, the Panel makes the following findings,
12 that the prisoner needs therapy in order to face,
13 discuss, understand and cope with stress in a
14 nondestructive manner. Until progress is made, the
15 prisoner continues to be unpredictable and a threat to
16 others. Nevertheless, the prisoner should be
17 commended for completing his GED in 1991 and having
18 been disciplinary-free, with the exception of an
19 administrative 115 for grooming, having been
20 disciplinary-free for approximately three and a half
21 years at this time. However, these positive aspects
22 of his behavior do not outweigh the factors of
23 unsuitability. This will be a three year denial. In
24 a separate decision, the Hearing Panel finds that the
25 prisoner has been convicted of murder and it is not
26 reasonable to expect that parole would be granted at a

1 hearing during the next three years. Specifically,
2 the reasons for this are, the commitment offense,
3 where the prisoner had confronted the victim in this
4 crime, somebody he had been having an ongoing feud
5 with. At that time he beat the victim with his fists,
6 stabbed him several times with a knife and then
7 eventually shot him in the head, resulting in his
8 death. We also note that the prisoner has a history
9 of misconduct while in prison. Since his inception
10 which was, I believe, in 1989, he has received four
11 115s, two of those were serious, one of those for
12 battery in 1995, another one for possession of
13 methamphetamines in 1996. We also note that the
14 prisoner has not completed the necessary programming
15 which is essential to his adjustment and needs
16 additional time to gain such programming, that he must
17 continue to participate in and become involved in
18 self-help and therapy programming. The Panel
19 recommends, within the next three years, the prisoner
20 remain disciplinary-free, if available, he try to
21 upgrade vocationally. We do acknowledge that he does
22 have a vocation, that he is a roofer by trade. We
23 also note that he is doing the welding but it wouldn't
24 hurt to keep busy in some way if you can find a job to
25 upgrade your welding, something that will help you
26 keep busy. And also, if available, participate in

1 self-help and therapy programming. I would recommend
2 that Mr. Brown get back into NA if he can. I think
3 that's only going to help you. If, for no other
4 reason, it appeases the Board and the Board likes to
5 see those things and I think, basically, you'll get
6 something out of that as well. Those still are grave
7 concerns to the Board, especially in light of the fact
8 it's been three and a half years only since that
9 possession of methamphetamine. And that is a concern
10 to the Board. And the one final thing is that you
11 work your parole plans and try to get something in
12 Placer County. My suspicion is, that's where you're
13 going to have to go back to. I would work on getting
14 parole plans in that area. Now, your wife lives not
15 too far from there so it shouldn't be too difficult
16 for her to assist you in that. Get as many letters as
17 you can in here of support as well, all right?

18 Anything you would like to add, Mr. Hepburn?

19 **COMMISSIONER HEPBURN:** No comments.

20 **PRESIDING COMMISSIONER ORTEGA:** Mr. Filangeri.

21 **DEPUTY COMMISSIONER FILANGERI:** No, thank you.

22 **PRESIDING COMMISSIONER ORTEGA:** Thank you. And
23 Mr. Hepburn will give you that copy. That's your
24 copy. And that will conclude the hearing at this
25 time.

26 **INMATE BROWN:** Thank you.

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1 ATTORNEY SKIPPER-DOTTA: Thank you.

2 PRESIDING COMMISSIONER ORTEGA: Good luck to
3 you.

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25 PAROLE DENIED THREE YEARS

26 EFFECTIVE DATE OF THIS DECISION

DEC 30 1999

27 CHARLES BROWN E-25371 DECISION PAGE 6 12/14/99

BOARD OF PRISON

STATE OF CALIFORNIA

LIFE PRISONER PAROLE CONSIDERATION WORKSHEET

INITIAL HEARING SUBSEQUENT HEARING

PRISONER'S NAME

BROWN, CHARLES

DATE OF HEARING

DECEMBER 14, 1999

CDC NUMBER

E-25371

LOCATION

CORRECTIONAL TRAINING FACILITY - SOLEDAD

LEGAL STATUS

DATE RECEIVED

8/8/89

DATE LIFE TERM STARTS (IF DIFFERENT)

12/8/89

COUNTY

PLACER

OFFENSE

MURDER 2ND W/USE F'ARM

CASE NUMBER

1259

COUNT NUMBER(S)

01

TERMS

15-LIFE PLUS 2 YRS

PENAL CODE SECTION(S) VIOLATED

187 w/12022.5

MEPD

5/6/00

OTHER COMMITMENT OFFENSES OR STAYED COUNTS

STAYED	OFFENSE	CODE SECTION	COUNTY	CASE NUMBER	COUNT NUMBER
<input type="checkbox"/>	ADW	245(A)(2)	PLACER	1636	01
<input type="checkbox"/>	MGF/POSS DW	12020(A)	PLACER	1635	01
<input type="checkbox"/>					

PRESENT AT HEARING

PANEL MEMBER

ORTEGA

PANEL MEMBER

FIDANGERI

PANEL MEMBER

HEPBURN

OTHERS PRESENT

 PRISONER (IF ABSENT, WHY) ATTORNEY

R. SKIPPER-DOTTA

 DEPUTY D. A.

NONE

COUNTY OF

 OTHERS:**STATEMENT OF FACTS** THE HEARING PANEL INCORPORATED BY REFERENCE FROM THE DECISION OF THE HEARING HELD

ON _____

, PAGES _____

THROUGH _____

 THE STATEMENT OF FACT IS QUOTED FROM THE BOARD REPORT, DATED _____, PAGE(S) _____ QUOTED FROM THE PROBATION OFFICER'S REPORT, PAGE(S) 3 QUOTED FROM THE COURT OPINION, PAGE(S) _____

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

**LIFE PRISONER: PAROLE CONSIDERATION
PROPOSED DECISION (BPT §2041)**

- I. [] PAROLE DENIED *3 yrs.*

If this proposed decision denying parole is approved, the Board will send you a copy of the approved decision, including the reasons for denial of parole, within 30 days of the hearing.

- II. [] PAROLE GRANTED

A. Base Period of Confinement Months

Case No.	Count No.	Offense
----------	-----------	---------

B. Firearm Enhancement + Months

C. Other Crimes Total + Months

Case No.	Count No.	Offense	mos.
----------	-----------	---------	------

Case No.	Count No.	Offense	mos.
----------	-----------	---------	------

Case No.	Count No.	Offense	mos.
----------	-----------	---------	------

D. Total Term Months

E. Postconviction Credit From _____ To _____ Months
(Date) (Date)

F. Total Period of Confinement Months

The period of confinement indicated is a tentative decision proposed by this panel. The decision will be reviewed pursuant to BPT §2041, and, if approved, a copy of the approved decision will be sent to you within 30 days. At that time appropriate pre-prison credits will be applied and a parole release date computed.

You will not engage in any conduct specified in BPT §2451. Such conduct may result in rescission or postponement of your parole date.

- II. If the proposed decision denying or granting parole is disapproved, you will receive a copy of the proposed decision and the reasons for disapproval. You will then receive a copy of the modified decision or will be scheduled for a new hearing, as appropriate.

PANEL HEARING CASE

Name	<i>DC Miller</i>	Date	<i>12/14/99</i>
Name	<i>DA Williams</i>	Date	<i>12/14/99</i>
Name	<i>Dale Ferguson</i>	Date	<i>12/14/99</i>
IAME	BROWN, CHARLES	CDC NUMBER	E-25371
		INSTITUTION	CTF
		HEARING DATE	12/14/99

BPT DIVISION REVIEW CORRECTIVE EET

INMATE: Charles Brown CDC NUMBER: E-25371
TYPE OF HEARING: Initial DATE OF HEARING: 12-14-99

A review of the hearing transcript and parole decision by the Decision Review Unit (DRU) has revealed the following error(s):

Page 1, Line 8, forgot Count #

Recommendation: To correct the error(s) set forth above in the hearing transcript, read the following language into the record at the next scheduled parole consideration hearing:

Page 1, Line 8, after Case # 1259,
add "Count 1",

APPROVED BY: Commissioner/Deputy Commissioner Date: 12-30-99

BOARD OF PRISON TERMS

BOSTON, MASSACHUSETTS

STATE OF CALIFORNIA

LIFE PRISONER: DOCUMENTATION HEARING (BPT §2269.1)

BPT REPRESENTATIVE

JAMES B. DOWLING

OFFENSE (CRIME AND TITLE)		SENTENCE INFORMATION	CASE NUMBER	COUNT NUMBER
PI87 MURDER 2ND/PI2022.5 USE F'ARM/P245(A)(2) ASLT W/F'ARM		P12020(A) POSS DW 3-7-2000	PLA 1259 &1635&1636	1,1,1
DATE RECEIVED CDC	MIN ELIG PAROLE DATE		EARLIEST MIN ELIG PAROLE DATE	
8-18-89				
INITIAL HRG SCHEDULED	PERIOD COVERED BY THIS HEARING		PRIOR DOCUMENTATION HEARING DATES	
2-99	1-11-93 TO PRESENT		1-11-93	

INFORMATION CONSIDERED

CDC 115 CHRONOS		LAUDATORY CHRONOS	
<input type="checkbox"/> DISCIPLINARY FREE		DATE	CIRCUMSTANCES
<input checked="" type="checkbox"/> MAJOR DISCIPLINARY (SERIOUS)	See BPT 1004		None
<input type="checkbox"/> MINOR DISCIPLINARY (ADMIN.)			
CDC 128 CHRONOS (NEGATIVE)		CHRONOS — WORK, EDUCATIONAL, VOCATIONAL, ETC.	
DATE	CIRCUMSTANCES	DATE	CIRCUMSTANCES
5-2-95	unauthorized Property	6-8-94	Work chrono indicates his welding skills have have grown by leaps & bounds.

INSTRUCTIONS TO CDC STAFF

DOCUMENTS STILL REQUIRED None

PSYCHIATRIC

REFER TO CATEGORY

COMPLETE PRIOR TO

Initial Parole Consideration Hearing

PLACE ON APPROPRIATE

 LIFE PRISONER DOCUMENTATION CALENDAR LIFE PRISONER PAROLE CONSIDERATION HEARING CALENDAR

OTHER

NAME	CDC NUMBER	INSTITUTION	CALENDAR	HEARING DATE
BROWN	E25371	MCSP	3/19/96	3/19/96

COPY TO INMATE
VIA CC-1 3/19/96 DWD

AFTER REVIEWING WITH THE PRISONER THE FACTS
EVALUATIONS AND FUTURE RECOMMENDATIONS:

WHICH MIGHT BE OF CONCERN AT HIS/HER INITIAL PAROLE HEARING. THE PANEL MADE THE FOLLOWING

RE VOCATIONAL TRAINING

Voc. welding: Certificates for Voc
welding,

RE ACADEMICS

Has GED, encouraged to do some
ed upgrading through self - study.

RE WORK RECORD

Working in P/I/P doing maintenance on
equip & some welding

RE GROUP ACTIVITIES

Encouraged to enroll in self-help
groups, especially N.A.

RE PSYCHIATRIC TREATMENT

None until IPC/H

RE PRISON BEHAVIOR

1 serious COC 115 - see BPT 1004

RE OTHER

BPT REPRESENTATIVE SIGNATURE

DATE

NAME
Brown

CDC NUMBER
E 25371

INSTITUTION
MCSP

CALENDAR
3/96

HEARING DATE
3/8/96

V

BOARD OF PRISON TERMS

TC-3-1
Burns

STATE OF CALIFORNIA

LIFE PRISONER: DOCUMENTATION HEARING (BPT §2269.1)

BPT REPRESENTATIVE

*RICHARD BEEKMAN***SENTENCE INFORMATION**

OFFENSE (CODE SECTION AND TITLE) P187/P12022.5 MURDER 2ND/W USE OF F/ARM		CASE NUMBER PLA 1259	COUNT NUMBER 01
DATE RECEIVED CDC 8-8-89	MIN. ELIG. PAROLE DATE 11-28-1999	EARLIEST MIN. ELIG. PAROLE DATE	
INITIAL HRG. SCHEDULED 10/98	PERIOD COVERED BY THIS HEARING 8-8-89 THRU 1-11-93	PRIOR DOCUMENTATION HEARING DATES N/A	

INFORMATION CONSIDERED

CDC 115 CHRONOS		LAUDATORY CHRONOS	
		DATE	CIRCUMSTANCES
<input type="checkbox"/> DISCIPLINARY FREE			<i>None</i>
<input checked="" type="checkbox"/> MAJOR DISCIPLINARY (SERIOUS)			
<input checked="" type="checkbox"/> MINOR DISCIPLINARY (ADMIN.)			
CDC 128 CHRONOS (NEGATIVE)		CHRONOS — WORK, EDUCATIONAL, VOCATIONAL, ETC.	
DATE	CIRCUMSTANCES	DATE	CIRCUMSTANCES
<i>1-18-91</i>	<i>Cell Conditions</i>	<i>11-2-91</i>	<i>GEO.</i>
		<i>8-1-92</i>	<i>Industries - Welder/Kiwi Satisfactory work.</i>

INSTRUCTIONS TO CDC STAFFDOCUMENTS STILL REQUIRED: *None*

PSYCHIATRIC:

REFER TO CATEGORY *N/A*

COMPLETE PRIOR TO _____

PLACE ON APPROPRIATE:

 LIFE PRISONER DOCUMENTATION CALENDAR LIFE PRISONER PAROLE CONSIDERATION HEARING CALENDAR*P/O Doc #2 11-95*

OTHER _____

NAME	CDC NUMBER	INSTITUTION	CALENDAR	HEARING DATE
BROWN, CHARLES	E-25371	FSP	12/92	1-11-93

AFTER REVIEWING WITH THE PRISONER THE FACTORS WHICH MIGHT BE OF CONCERN AT HIS/HER INITIAL PAROLE HEARING, THE PANEL MADE THE FOLLOWING EVALUATIONS AND FUTURE RECOMMENDATIONS:

RE: VOCATIONAL TRAINING

Needs voc. training - interested in welding.

RE: ACADEMICS

Has completed GEO. Has interest in college.

RE: WORK RECORD

Presently working in kitchen. Wants better work assignment. Would like to get job in industries back.

RE: GROUP ACTIVITIES

Needs self help. Would benefit from A.A. & or N.A.

RE: PSYCHIATRIC TREATMENT

None indicated.

RE: PRISON BEHAVIOR

Become disciplinary free. Importance in relationship to suitability was explained to him.

RE: OTHER

Prisoner claims that 115 of 10/6/ was dismissed but there is still Xerdy copy in "C" file that doesn't show any disposition.

This needs to be cleared up so that there is no confusion.

BPT REPRESENTATIVE SIGNATURE

Richard Beckman

DATE

1-11-93

NAME BROWN	CDC NUMBER E-25371	INSTITUTION FSP (OLD)	CALENDAR 12/92	HEARING DATE 1-11-93
---------------	-----------------------	--------------------------	-------------------	-------------------------

EXHIBIT “B”

ABSTRACT OF JUDGMENT - COMMITMENT
SINGLE OR CONCURRENT COUNT FORM

(Not to be used for Multiple Count Convictions nor Consecutive Sentences)

FORM DSL 290.1

Placer

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____
COURT I.D. _____
3 1 BRANCH _____PEOPLE OF THE STATE OF CALIFORNIA versus
DEFENDANT: CHARLES LLOYD BROWN
AKA: PRESENT NOT PRESENTCOMMITMENT TO STATE PRISON
ABSTRACT OF JUDGMENT AMENDED
ABSTRACTCASE NUMBER
1635

DATE OF HEARING MO. (DAY) (YR)	DEPT. NO.	JUDGE James L. Roeder	CLERK C. McLaurin
8 07 89	3		
COUNSEL FOR PEOPLE elores Gilbert		COUNSEL FOR DEFENDANT Richard Opich	PROBATION NO. OR PROBATION OFFICER Michael Sipe
		David A. Brooks	

DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONY:

COUNT	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED LAC MO DAY YEAR	DATE OF CONVICTION		CONVICTION BY JURY TRIAL COURT PLEA	TERM (L, M, U) X M	TIME IMPOSED YEARS MONTHS
				MO	DAY			
1	PC 12020(a)	Possession of a DW	87 07 19 89			X	M	2

ENHANCEMENTS (CHARGED AND FOUND, STRICKEN, TIME IMPOSED):

COUNT	12022(a)	12022(b)	12022.3(a)	12022.3(b)	12022.5	12022.6(a)	12022.6(b)	12022.7	12022.8			
	C/F	S	I	C/F	S	I	C/F	S	I	C/F	S	I

OTHER ORDERS:

A. A. NUMBER OF PRIOR PRISON TERMS:

S	C/F	S	I
667.5(a)			
667.5(b)			
667.6(b)			

B. NUMBER OF PRIOR FELONY CONVICTIONS:

S	C/F	S	I
667.6(a)			

TIME STAYED § 1170.1(f) [DOUBLE BASE LIMIT]:

TOTAL TERM IMPOSED: 2 THIS SENTENCE IS TO RUN CONCURRENT WITH ANY PRIOR UNCOMPLETED SENTENCE(S).

Placer County Superior Court #1259

EXECUTION OF SENTENCE IMPOSED:

AT INITIAL SENTENCING HEARING	B. AT RESENTENCING PURSUANT TO DECISION ON APPEAL	C. AFTER REVOCATION OF PROBATION	D. AT RESENTENCING PURSUANT TO RECALL OF COMMITMENT [PC § 1170(d)]
DATE SENTENCE PRONOUNCED: 08 07 89	CREDIT FOR TIME SPENT IN CUSTODY:	TOTAL DAYS 462	ACTUAL LOCAL TIME 3:00
			LOCAL CONDUCT CREDITS 152
			STATE INSTITUTIONS <input type="checkbox"/> DMH <input checked="" type="checkbox"/> CDC

DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF TO BE DELIVERED:

FORTHWITH <input type="checkbox"/>	INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION-GUIDANCE CENTER LOCATED AT:	CALIF. INSTITUTION FOR WOMEN — FRONTIER	CALIF. MEDICAL FACILITY — VACAVILLE
AFTER 48 HOURS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS <input type="checkbox"/>		OTHER SPECIFY:	<input type="checkbox"/> CALIF. INSTITUTION FOR MEN — CHINO



I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

BUDY'S SIGNATURE

C. McLaurin

This form is prescribed pursuant to Penal Code § 1213.5 to satisfy the requirements of Penal Code § 1213 (Abstract of Judgment and Commitment) for determinate sentences under Penal Code § 1170. A copy of probation report shall accompany the Department of Corrections' copy of this form pursuant to Penal Code § 1203c. Copy of the sentencing proceedings and any supplementary probation report shall be transmitted to the Department of Corrections pursuant to Penal Code 203.01. Attachments may be used but must be incorporated by reference.

Form Adopted by the
Judicial Council of CaliforniaABSTRACT OF JUDGMENT — COMMITMENT
SINGLE OR CONCURRENT COUNT FORM

(Not to be used for Multiple Count Convictions nor Consecutive Sentences)

ABSTRACT OF JUDGMENT - COMMITMENT

SINGLE OR CONCURRENT COUNT FORM

(Not to be used for Multiple Count Convictions nor Consecutive Sentences)

FORM DSL 290.1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____
COURT I.D. _____
3 1
BRANCH _____PEOPLE OF THE STATE OF CALIFORNIA versus
DEFENDANT: CHARLES LLOYD BROWN
AKA:

Placer

FILED

SEP 15 1989

MARY ANN HULSE
COUNTY CLERK OF PLACER COUNTY
C. MCLAURIN
DEPUTYCOMMITMENT TO STATE PRISON
ABSTRACT OF JUDGMENT AMENDED
 ABSTRACT

CASE NUMBER

1636

CLERK

C. McLaurin

DATE OF HEARING (MO) (DAY) (YR)	DEPT. NO.	JUDGE		
3 07 89	3	James L. Roeder	COUNSEL FOR DEFENDANT	
PORTER		COUNSEL FOR PEOPLE	PROBATION NO. OR PROBATION OFFICER	
Miguel Gilbert		Richard Opich	David A. Brooks	Michael Sipe

DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONY:

COUNT	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED MO DAY YEAR	DATE OF CONVICTION		CONVICTION BY JURY TRIAL COURT ALEA TERM(L, M, U)	TIME IMPOSED YEARS MONTHS
				MO	DAY	YEAR	
1	PC 245(a)(2)	Assault w/Firearm	87 07 19 89		X	M	3

ENHANCEMENTS (CHARGED AND FOUND, STRICKEN, TIME IMPOSED):

COUNT	12022(a)	12022(b)	12022.3(a)	12022.3(b)	12022.5	12022.6(a)	12022.6(b)	12022.7	12022.8			
	C/F	S	I	C/F	S	I	C/F	S	I	C/F	S	I

OTHER ORDERS:

A. A. NUMBER OF PRIOR PRISON TERMS:

S	C/F	S	I
667.5(a)			
667.5(b)			
667.6(b)			

B. NUMBER OF PRIOR FELONY CONVICTIONS:

S	C/F	S	I
667.6(a)			

TIME STAYED § 1170.1(f) [DOUBLE BASE LIMIT]:

TOTAL TERM IMPOSED: → 3 |

 THIS SENTENCE IS TO RUN CONCURRENT WITH ANY PRIOR UNCOMPLETED SENTENCE(S).

Placer County Superior Court #1259

EXECUTION OF SENTENCE IMPOSED:

<input checked="" type="checkbox"/> AT INITIAL SENTENCING HEARING	<input type="checkbox"/> AT RESENTENCING PURSUANT TO DECISION ON APPEAL	<input type="checkbox"/> AFTER REVOCATION OF PROBATION	<input type="checkbox"/> AT RESENTENCING PURSUANT TO RECALL OF COMMITMENT [PC §1170(d)]
DATE SENTENCE PRONOUNCED: MO DAY YEAR 08 07 89	CREDIT FOR TIME SPENT IN CUSTODY:	ACTUAL LOCAL TIME	LOCAL CONDUCT CREDITS
	465	310	155
	INCLUDING:		DMH CDC

DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED:

<input checked="" type="checkbox"/> FORTHWITH	INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION-GUIDANCE CENTER LOCATED AT:	<input type="checkbox"/> CALIF. INSTITUTION FOR WOMEN — FRONTIERA	<input type="checkbox"/> CALIF. MEDICAL FACILITY — VACAVILLE	<input type="checkbox"/> CALIF. INSTITUTION FOR MEN — CHINO
<input type="checkbox"/> AFTER 48 HOURS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS		<input type="checkbox"/> OTHER (SPECIFY)		

CLERK OF SUPERIOR COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

PUTTING SIGNATURE

C. McLaurin

DATE

SEP 15 1989

This form is prescribed pursuant to Penal Code §1213.5 to satisfy the requirements of Penal Code §1213 (Abstract of Judgment and Commitment) for determinate sentences under Penal Code §1170. A copy of probation report shall accompany the Department of Corrections' copy of this form pursuant to Penal Code §1203c. Copy of the sentencing proceedings and any supplementary probation report shall be transmitted to the Department of Corrections pursuant to Penal Code 203.01. Attachments may be used but must be incorporated by reference.

Form Adopted by the
Official Council of CaliforniaABSTRACT OF JUDGMENT - COMMITMENT
SINGLE OR CONCURRENT COUNT FORM

COURT	2
R.A.	3
P.D.	4
ATTY.	5
	6

1
2
3
4
5
6

FILED

PLACER COUNTY PROBATION DEPARTMENT
 11564 "C" AVENUE)
 AUBURN, CA 95603) AUG 7 1989
 916/889-7900) MARY ANN HULSE
) COUNTY CLERK OF PLACER COUNTY
 BY) DEPUTY
)

SUPERIOR COURT OF CALIFORNIA - COUNTY OF PLACER

PEOPLE OF THE STATE OF CALIFORNIA) Department No. 3
 Plaintiff,) Case No. 1635/1636
 vs.)
 CHARLES LLOYD BROWN,) PROBATION OFFICER'S REPORT
 Defendant.) X Presentence

AGE: 36 BORN: January 23, 1953

ADDRESS: Placer County Jail

DATE COMMITTED: Case 1635: September 7, 1987;
Case 1636: August 10, 1987

DATE OF ARREST: Case 1635: September 7, 1987;
Case 1636: September 12, 1988

TIME IN CUSTODY: 615 days (actual)

FELONY COMPLAINT FILED: Case 1635: January 26, 1989;
Case 1636: April 28, 1988

INFORMATION FILED: Unknown

GUILTY BY: Plea

GUILTY OF: Case 1636: Count One, 245(a)(2) PC, ASSAULT WITH A FIREARM, a felony; Case 1635: Count One, 12020(a) PC, POSSESSION OF A DEADLY WEAPON, a felony.

REPRESENTED BY: Public Defender/Brooks

REFERRAL TO PROBATION OFFICER: July 19, 1989

JUDGMENT AND SENTENCE: August 7, 1989

PROBATION OFFICER'S RECOMMENDATION: Department of Corrections

1 PRESENT OFFENSE:

2 Case 1636: Count One, 245(a)(2) PC, ASSAULT WITH FIREARM, a
3 felony.

4 The defendant beat and tortured a victim at the victim's resi-
5 dence.

6 The following information is obtained in summary from Placer
7 County Sheriff's Department report 87-08-010-0041:

8
9 On August 10, 1987, at 9:39 a.m., Officers Taylor and Barnburg
10 responded to an assault. They met with Donald Lefebure who
11 directed them to the victim, Daniel Amrine. Mr. Amrine was
12 observed to have blood on his face, arms, and chest, and was
13 bleeding profusely. He reported being beaten with guns, knives,
14 pipes, and tortured with an iron. He was observed to have burns
15 on his back and left arm.

16 Mr. Amrine stated he was home when CHARLES BROWN, the defendant,
17 and another male subject came to his residence and entered. See-
18 ing the defendant had a gun, Mr. Amrine ran to his bedroom to
19 retrieve a .38 caliber handgun when he was caught and told to sit
20 on the couch in living room. It was there that he was repeatedly
21 hit with a hammer in the head, elbows, and knees. He was struck
22 several times with guns, pipes, and other items. He was then
23 tortured with an iron burning his back and left arm. He was
24 threatened to be killed before he broke a window and escaped. He
25 was in extreme pain and transported to the hospital. He reports
26 the defendant stole over \$1,000 in personal belongings from his
27 residence.

28 On August 20, 1987, the defendant was questioned about the inci-
29 dent by sheriff's department detectives. The defendant denied
30 t torturing the victim, saying they were friends. When he learned
31 the victim was responsible for sexually molesting a little girl,

32 ...

1 the defendant decided to confront the victim. He denied the
2 assault stating the other male subject must have been the one who
3 hit the victim.

4 Case 1635: Count One, 12020(a) PC, POSSESSION OF DEADLY
5 WEAPON, a felony.

6 The following information was obtained in summary from Roseville
7 Police Department report 250-87-08780:

8 On September 7, 1987, the manager of Harding Inn, Lorna Wilson,
9 called Roseville Police Department and reported two tenants who
10 had not checked out and were overdue to do so. Roseville
11 officers responded and knocked on the door. No response was
12 received, so Ms. Wilson opened the door. The defendant and a
13 female companion were observed partially clothed and asleep on
14 the bed. A gun holster was also observed on the bed. The defen-
15 dant awakened and was determined to be somewhat incoherent. He
16 complained of shooting himself and was observed to have an Ace
17 bandage on one of his legs. Roseville officers searched the
18 room, finding numerous gun parts, sawed-off rifles, live ammu-
19 nition, loaded clips, and controlled substances. The defendant
20 was arrested for possession of a sawed-off rifle.

21 On July 19, 1989, CHARLES LLOYD BROWN pled guilty to the offenses
22 noted on the face sheet of this report. According to the court
23 minutes, the District Attorney promised the sentence to run con-
24 current with Superior Court Case number 1259. Judgment and sen-
25 tence was then scheduled for August 7, 1989.
26

27 STATUS OF CODEFENDANT(S):

28 The codefendant involved in Case number 1636 was not identified
or arrested.
29
30

DEFENDANT'S STATEMENT:

Based upon the nature of the present referral, in addition to the defendant's recent court appearance in Case 1259 and his refusal to give a statement in that case, a statement was not obtained from the defendant regarding the present offenses.

VICTIM'S STATEMENT/RESTITUTION:

Probation has made numerous attempts in contacting Daniel Amrine unsuccessfully. Therefore, no victim statement could be obtained during the investigation.

PRIOR RECORD:

A copy of defendant's criminal history as obtained under C.I.I. No. A03630735 reflects the following:

10/21/68	PDROSEVILLE 15301	1:TAKE VEHICLE W/O OWN CONSENT/VEH THEFT.	10/21/68 DISPO:TO JUVENILE HALL.
4/4/71	SOLOS ANGELES 1491-538	1:KIDNAPING	7/8/71 DISPO: CON- VICTED 487.2 PC- GRAND THEFT FROM PERSON.
6/7/73	MCLOS ANGELES METRO 31448390	4:LOCAL ORDINANCE VIOLATION	DISPO:CONVICTED- PLED NOLO CONTENDRE
12/14/83	MCSACRAMENTO 8410	2:415 PC-FIGHT/NOISE OFFENSIVE WORDS	DISPO: CONVICTED FINE CONV STATUS: MISDEMEANOR.
2/4/88	MCSACRAMENTO 88M01887	2:12020(A)PC-POSSESS MPG/SELL DANGEROUS WEAPON. 3: 12031 PC-CARRY LOADED FIREARM IN PUBLIC PLACE. 4: 11364 H&S-POSSESS CONTROL SUBSTANCE PARA- PHERNALIA	DISPO:CONVICTED- PROB/JAIL. CONV STATUS:MISDEMEANOR DISPO:CONVICTED- PROB/JAIL. CONV STATUS: MISDE MEANOR. DISPO: CONVICTED-JAIL CONV STATUS: MISDEMEANOR.
.....			

1 4/23/88 SC AUBURN 1:189 PC, SECOND
2 1259 DEGREE MURDER 6/15/89: CON-
3 VICTED BY JURY
4 SENTENCED TO
5 15 YRS. TO LIFE.

6 SOCIAL STUDY:

7 The following information is obtained from a Placer County Probation
8 Department interview verification/OR report dated September
9 15, 1988, and a previous probation report dated July 13, 1989:

10 CHARLES LLOYD BROWN is 35 years of age, having been born January
11 23, 1953. He was living in a motel in Sacramento for approxi-
12 mately one week prior to his last arrest. Previously, he had
13 been residing at 7262 Callison in Penryn. The defendant reports
14 having a sister and brother-in-law in Citrus Heights. The defen-
15 dant is divorced and has two children, ages 12 and 11. He has
16 been unemployed for two years, and was last employed by Erickson
17 Roofing Company in Orangevale. He was earning approximately \$15
18 per hour. Previous employment includes working as a roofer and a
19 laborer. The defendant was supported by his girlfriend who helps
20 him out. He has not paid child support to his two children in
21 over two years.

22 FINANCIAL CONSIDERATION:

23 Based upon this officer's recommendation, reimbursement for this
24 report will not be recommended.

25 RULE 414 - CRITERIA AFFECTING PROBATION:

26 (a) Eligibility. The defendant is statutorily eligible for
27 probation, however, Penal Code Section 1203.095(a) states the
28 defendant must serve a minimum period of incarceration in county
 jail.
.....

1 (b) Danger to Others. Elements of the present offense and the
2 defendant's prior record indicate he is a significant danger to
3 others.

4 (c)(1) Description of Crime. Case 1636 involves the defendant
5 entering a victim's residence and beating him with a gun and
6 hammer, and torturing him with an iron. Case 1635 involves the
7 defendant being in possession of deadly weapons.

8 (c)(2) Vulnerability. Daniel Amrine was particularly vulnerable
9 in that the offense occurred at his residence where he was
10 assaulted by two male suspects, including the defendant.

11 (c)(3) Weapon. Case 1636, the defendant was described as having
12 a large caliber handgun. In Case 1635, numerous gun parts, a
13 sawed-off rifle, live ammunition and loaded clips were found
14 within the defendant's motel room.

15 (c)(4) Injury. Daniel Amrine was observed to have blood on his
16 head, back, and arms and was observed to be bleeding profusely.
17 He was described as being in tremendous pain before being trans-
18 ported to the hospital.

19 (c)(5) Participation. The defendant and his cocompanions appear
20 equally culpable in the present offenses. Facts related by the
21 police department indicate planning on the part of the defen-
22 dant. The defendant had admitted to sheriff's detectives that he
23 returned to Mr. Amrine's residence to confront him about a sexual
24 molestation. Case 1635, the numerous gun parts found throughout
25 the hotel room indicate both planning and premeditation.

26 (c)(6) Unusual Circumstances. Not applicable.

27 (c)(7) Sophistication. The facts of the present offense do not
28 indicate a great deal of sophistication on the part of the defen-

1 (c)(8) Position of Trust. The victim in Case 1636 was an
2 acquaintance of the defendants, therefore allowing him into his
3 home and violating a position of trust.

4 (d)(1) Record. The defendant has a prior record of theft and
5 assaultive-related offenses dating back to 1968.

6 (d)(2) Probation/Parole Performance. The defendant's past per-
7 formance on probation appears unsatisfactory on the basis of his
8 continuing arrests for related offenses.

9 (d)(3) Compliance to Probation. Unknown.

10 (d)(4) Personal Data. The court's attention is respectfully
11 directed to the social study section of this report.

12 (d)(5) Financial/Military. Unknown.

13 (d)(6) Substance Abuse. Unknown.

14 (d)(7) Effect of Imprisonment or Local Incarceration. Unknown.

15 (d)(8) Effect of a Felony. Unknown.

16 (d)(9) Remorse. Unknown.

17 (d)(10) Refusal/Restitution. Unknown.

18 **RULE 421 - CIRCUMSTANCES IN AGGRAVATION:**

19 (a) Facts relating to the crime:

20 (1) The crime involved great violence, great bodily harm, threat
21 of great bodily harm, or other acts disclosing a high degree of
22 cruelty, viciousness or callousness, whether or not charged or
23 chargeable as an enhancement under Section 12022.7.
24

25

1 The defendant not only beat the victim, but tortured him with a
2 hot iron.

3 (3) The victim was particularly vulnerable.

4 (Case 1636) Daniel Amrine was attacked by the defendant and a
5 codefendant at the victim's residence.

6 (8) The planning, sophistication, or professionalism with which
7 the crime was carried out, or other facts, indicate premeditation.

8 The defendant admitted to sheriff's detectives that he had
9 returned to Daniel Amrine's residence to confront him about a
10 sexual molestation. Additionally, the number of weapon parts
11 found in the defendant's hotel room in Case 1635 indicates pre-
12 meditation.

13 (12) The defendant took advantage of a position of trust or con-
14 fidence to commit the offense.

15 Daniel Amrine reported to sheriff's deputies that he knew the
16 defendant and accordingly let him into his residence before he
17 was assaulted. The defendant was in a position of trust over the
18 victim to gain access into the residence.

19 (b) Facts relating to the defendant:

20 (1) He has engaged in a pattern of violent conduct which indi-
21 cates a serious danger to society.

22 (2) The defendant's prior convictions as an adult are numerous or
23 of increasing seriousness.

24 RULE 423 - CIRCUMSTANCES IN MITIGATION:

25 (a) Facts relating to the crime:

26

1 None.

2 (b) Facts relating to the defendant:

3 (3) The defendant voluntarily acknowledged wrongdoing prior to
4 arrest or at an early stage of the criminal process.

5 The defendant pled guilty to the present offenses in Municipal
6 Court.

7 RULE 425 - CRITERIA FOR CONCURRENT OR CONSECUTIVE SENTENCING:

8 Criteria affecting the decision to impose consecutive rather than
9 concurrent sentences include:

10 (a) Facts relating to the crimes, including whether or not:

11 (1) The crimes and their objectives were predominantly
12 independent of each other.

13 (2) The crimes involved separate acts of violence or threats of
14 violence.

15 (3) The crimes were committed at different times or separate
16 places, rather than being committed so close in time and place as
17 to indicate a single period of aberrant behavior.

18 (4) Any of the crimes involved multiple victims.

19 (b) Any circumstances in aggravation or mitigation.

20 It is indicated on the Court minutes that the District Attorney
21 promised the sentence to run concurrent with Superior Court Case
22 1259. This offense occurred at a separate time and a different

23 ***

24

1 location from Case 1259. It involves additional victims and
 2 similar behavior. There are numerous circumstances in aggra-
 3 vation relating to both cases. Accordingly, consecutive sen-
 4 tences are considered appropriate and are being recommended,

5 COMMUNITY SERVICE/WORK FURLough:

6 Based upon this officer's recommendation, neither community ser-
 7 vice nor work furlough are being considered.

8 TIME SERVED CREDITS - 2900.5/4019 PENAL CODE:

9 The defendant was in custody in this case as follows:

12 <u>Facility</u>	13 <u>Dates</u> <u>From</u> <u>To</u>	14 <u>Actual</u> <u>Days</u> <u>Served</u>	15 <u>4019 or</u> <u>Case Law</u> <u>Credit</u>	16 <u>Total</u>
(Case 1635)				
14 Placer County Jail	11/19/87 11/20/87	15 2		
15 Placer County Jail	2/16/88 2/18/88	16 3		
16 Placer County Jail	9/12/88 7/17/89	17 305		
(Case 1636)				
16 Placer County Jail	9/12/88 7/17/89*	17 305		
		18 615	19 307	20 42

18 *On July 17, 1989, the defendant became a sentenced prisoner in
 19 Case 1259. Pursuant to People vs. Rojas, the defendant is not
 20 entitled to presentence credits after he has been sentenced in a
 previous case.

21 EVALUATION:

22 CHARLES LLOYD BROWN, aged 36, appears before the Superior Court
 23 of Placer County for sentencing following his plea of guilty,
 24 Assault with a Firearm and Possession of Deadly Weapons. The
 25 offenses involve the defendant accompanying a codefendant to
 26 Daniel Amrine's residence where they beat him with hammers and
 27 guns, and tortured him with a hot iron. The victim was able to
 28 break out a window and escaped before calling law enforcement.
 ...

The defendant was later interviewed and denied responsibility. In Case 1635, the defendant was reported as being a tenant who had failed to check out at the normal checkout time. He was encountered by Roseville Police Department officers and later found to be in possession of numerous gun parts, a sawed-off rifle, live ammunition, loaded clips, and controlled substances. The defendant's motive for Case 1636 is admittedly retaliation for the victims involved in a sexual molestation case. The defendant's motive for Case 1635 is unknown.

8 Although statutorily eligible for probation, probation is not
9 being recommended. It is noted the defendant was sentenced to 15
10 years to life July 17, 1989, for Superior Court case 1259,
11 involving Second Degree Murder. Based upon the disposition in
12 that case, along with the defendant's repeated violations of the
13 law involving assaultive and theft-related offenses, he is not
 considered an amenable candidate for probation.

14 Although it is noted in the court minutes that the District
15 Attorney promised the defendant's sentence for the present cases
16 to run concurrent with Superior Court case 1259, in reviewing the
17 criteria under Rule 25 involving concurrent or consecutive sen-
tencing, this officer will be recommending consecutive sentences.

RECOMMENDATION:

20 It is therefore respectfully recommended probation be denied and
21 CHARLES LLYOD BROWN be committed to the Department of Corrections
22 for the computed term.

	<u>Base Term</u>	<u>Penalty Range</u>	<u>Penalty Recommended</u>
Case 1259:	Ct. 1, 189 PC	15 years to Life	15 years to Life
.....			

Subordinate Terms

Case 16361

Case 1635:

Enhancements

Case 1259, 12022.5 PC

2 years

TOTAL AGGREGATE TERM

18 yrs., 9 mos.

To Life

It is further recommended defendant shall pay a RESTITUTION FINE to the State Restitution Fund in the amount of \$100 through the Placer County Revenue Services Division.

Respectfully submitted,

**TED L. SMITH
CHIEF PROBATION OFFICER**

MICHAEL A. SIPE
Deputy Probation Officer

MAS/rlh
July 27, 1989

1 Approved by:

2

3 H. JOHN BIXLER
Probation Supervisor

4

5 I have read and considered the foregoing report and
recommendation of the Probation Officer,

6

7

"and presented for signature
and signed 8-7-09

JAMES L. ROEDER
JUDGE OF THE ABOVE ENTITLED COURT

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EXHIBIT “C”

**MENTAL HEALTH EVALUATION FOR
THE BOARD OF PRISON HEARINGS
July, 2006 Lifer Calendar**

**CORRECTIONAL TRAINING FACILITY SOLEDAD
JUNE, 2006**

NAME: **BROWN, CHARLES**
CDC#: **E-25371**
DOB: **1/23/53**
OFFENSE: **PC 187 MURDER, SECOND DEGREE**
DATE OF OFFENSE: **4/23/88**
SENTENCE: **17 YEARS TO LIFE**
MEPD: **5/6/00**
EVALUATION DATE: **6/1/06**

I. IDENTIFYING INFORMATION:

Mr. Charles Brown is a 53 year old, first term, married, Caucasian male from Placer County. He is a Christian. He has served 17 years in custody.

SOURCES OF INFORMATION:

This evaluation is based upon a single one hour interview, plus review of the central and medical files.

The psychological evaluation, dated 7/2/99, by Dr. Reed, Psychologist at CTF-Soledad, contains a Psychosocial Assessment. This information was reviewed with the inmate and is still current and valid. As a result, this information will not be repeated at this time.

BROWN, CHARLES**E-25371****6/1/06****PAGE 2****CLINICAL ASSESSMENT****XII. CURRENT MENTAL STATUS/TREATMENT NEEDS**

Mr. Brown related during the interview in a serious, sober, non-defensive and cooperative manner. His mental status was within normal limits. His thinking was rational, logical, and coherent. His speech was normal, fluent and goal oriented. His affect was appropriate. There was no evidence of anxiety or of depression. His eye contact was good. His estimated level of intellectual functioning was in the average range. His memory was intact. His judgment was intact. His insight and self-awareness were good.

Mr. Brown explained that he was involved in the drug culture and biker culture when he was younger. These activities resulted in the commitment offense. He has been clean and sober for 12 years. This is after he obtained a disciplinary, in 1996, for possession of methamphetamine. He continues to attend Alcoholics Anonymous. He has also attended Narcotics Anonymous over the years. Drugs and alcohol are available in the institutional environment. The fact that he has remained clean and sober shows that he has matured, has good self-control, and is determined to avoid use of drugs in the future. Since he has remained clean and sober for 12 years, this no longer is a current diagnostic problem.

He has completed Vocational Welding with AWS certification. He also has completed his GED. In addition, he has attended Anger Management courses. He has completed the Project Change course. He stated that he enjoyed the Anger Management class, and he is planning to re-enroll in another one that will be offered in this facility.

There is no evidence of any mental or emotional problems in this case. There is no evidence of a personality disorder.

CURRENT DIAGNOSTIC IMPRESSION

- Axis I: No mental disorder
- Axis II: No personality disorder
- Axis III: No physical disorder
- Axis IV: Life term incarceration
- Axis V: Current GAF: 90

BROWN, CHARLES**E-25371****6/1/06****PAGE 3****XIII. REVIEW OF LIFE CRIME**

Mr. Brown accepts full responsibility for the victim's death. He noted that he was very angry at the time. The victim had tried to kill him on three occasions. This fact is supported by the findings of the court. He stated that at the time he shot the victim, the victim had a gun in his hand. He admitted that he was enraged at the time of this offense. He stated that he shot the victim impulsively without premeditation. He stated that this offense was a terrible thing and that he was very sorry about it. He showed good understanding about how dangerous drugs and the drug culture are. His feelings of remorse regarding the commitment offense appear to be sincere and genuine.

XIV. ASSESSMENT OF DANGEROUSNESS

- A. In considering potential for dangerous behavior in the institution, he did receive a disciplinary on 4/3/03 for battery without serious injury. He enrolled in Anger Management classes right after this offense. At this point in time, he does not appear to have anger management issues. As a result, compared to other inmates, violence potential is below average.
- B. In considering potential for dangerous behavior when released to the community, the Level of Service Inventory-Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, disciplinaries, and current attitudes in order to determine current risk level on parole. He obtained a score of 6.6 cumulative frequency for prison inmates. This score means that if 100 men were released on parole, he would be expected do better on parole than 93 of them. This is a very low risk level. Also, his age, 53, would reduce this risk level. The age factor is not considered by this actuarial measure. Research has shown, based upon the US Department of Justice, statistics regarding recidivism rates for inmates on parole that over the age of 55, there is only 1.4 percent recidivism rate. The recidivism rate for lifers who have done many years in prison is even lower than that—less than 1 percent. Therefore, the potential for dangerous behavior at this point in his life, in comparison to the average citizen in the community, is below average.
- C. At this point in time, there are no significant risk factors in this case.

BROWN, CHARLES

E-25371

6/1/06

PAGE 4

XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS

There are no mental or emotional problems in this case that would interfere with routine parole planning. He has excellent vocational skills in a trade that are highly valued in the community. He has job offers on file as a welder. He also has residence available in Sacramento with family members. No further programming is needed in this case. The prognosis for successful adjustment in the community in this case is excellent.

M. Macomber Ph.D

M. Macomber, Ph.D.
Correctional Psychologist
Correctional Training Facility, Soledad

B. Zika, Ph.D.

B. Zika, Ph.D.
Senior Psychologist
Correctional Training Facility, Soledad

D: 6/1/06

T: 6/2/06

EXHIBIT “D”

C-file copy

LIFE PRISONER EVALUATION REPORT
SUBSEQUENT PAROLE CONSIDERATION HEARING
MARCH 2006 CALENDAR

BROWN, CHARLEY

E25371

I. COMMITMENT FACTORS:

A. **Life Crime:** Murder 2nd, PC 187 with Use of a Firearm, PC 12020(a), Assault with a Firearm, PC 245(A). Placer County Case #1259/1635/1636. Sentence: 15 years to Life plus 2 years enhancement. MEPD: 5/6/00. Victim: Michael Konz, age unknown. Received by CDC on 8/8/89.

1. **Summary of Crime:** All relevant documents from the previous hearings including the transcripts have been considered and that information appears valid and the writer has no further information to add.
2. **Prisoner's Version:** Remains the same as stated in the previous hearing.
3. **Aggravating/Mitigating Circumstances:**

- a. **Aggravating Factors:** Remains the same as stated in the previous hearing.
- b. **Mitigating Factors:** Remains the same as stated in the previous hearing.

B. **Multiple Crime(s):** None.

1. **Summary of Crime:** None.
2. **Prisoner's Version:** None.

II. PRECONVICTION FACTORS:

- A. **Juvenile Record:** Remains the same.
- B. **Adult Convictions and Arrests:** Remains the same.
- C. **Personal Factors:** Remains the same.

Sent to Inmate on 12/16/05

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION HEARING
MARCH 2006 CALENDAR

2

III. POSTCONVICTION FACTORS:

- A. **Special Programming/Accommodations:** None noted.
- B. **Custody History:** Documents from the previous hearings have been considered and that information remains valid. During the period of time since the last hearing (3/1/05), Brown's behavior has been positive in that he has remained disciplinary free. He is currently unassigned on the priority hire waiting list. He is a non-adverse transfer from CTF-North where he was assigned to the maintenance engineer shop.
- C. **Therapy and Self-Help Activities:** Brown has completed Anger Management.
- D. **Disciplinary History:** Brown has received four CDC 128A's and five CDC 115's. See disciplinary sheet for details.
- E. **Other:** A Subsequent Parole Hearing was held on 3/1/05. The BPT denied parole for one additional year and requested a new psych report.

Recommendations

- 1. Get self help.
- 2. Stay disciplinary free.
- 3. Earn positive chronos.

IV. FUTURE PLANS:

- A. **Residence:** Brown plans to reside with his daughter, Mindy Vita, 8766 Clay Glen Way, Elk Grove, California (916) 427-5370.
- B. **Employment:** Brown was a Journeyman Roofer for fourteen years prior to his incarceration and has completed the Vocational Welding Program. Brown has received job offers from California Bridge and Iron as a full time welder and United Rentals.
- C. **Assessment:** Brown has letters of support to validate his employment plans and has marketable work skills. He needs to update his support letters and residence plans prior to the hearing.

V. USINS STATUS: No holds.

VI. SUMMARY:

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION PERIOD
MARCH 2006 CALENDAR

3

- A. Prior to release, Brown could benefit from: remaining disciplinary free, obtaining a job and participating in a self-help program.
- B. This report is based upon a personal interview, incidental contact in the housing unit and a thorough review of the Central File.
- C. Brown was afforded an opportunity to examine his Central File. See CDC 128B dated 12/2/05.
- D. No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan (ARP) for effective communication.

DISCIPLINARY SHEET

CDC 128A's:

01/18/91	FOL	Cell conditions.
05/02/95	MCSP	Unauthorized hobby craft.
03/09/98	SOL	Not in compliance with grooming standards.
02/02/00	CTF	Unexcused absence.

CDC 115's:

08/20/92	FOL	3033(A)	Alteration of State Issued Shoes; Guilty: Assessed \$34.00 for replacement costs of Shoes.
08/29/95	MCSP	3005(c)	Mutual Combat; Guilty: Assessed 90 days loss of credit.
06/07/96	MCSP	3016	Possession of Methamphetamines: Guilty: Assessed 150 days loss of credits and six months non-contact visiting. Placed on substance abuse program for six months.
03/16/98	CSP-SOL	3005(b)	Failure to Comply with Grooming Standards: Guilty: Five days confined to Quarters, 30 days loss of night yard privileges.
04/03/03	CTF-C	3005	Battery Without Serious Injury: Guilty: Assessed 90 days credit forfeiture.

LIFE PRISONER EVALUATION REPORT
PAROLE CONSIDERATION RING
MARCH 2006 CALENDAR

4

M. Rubio 12-9-05
M. Rubio Date
Correctional Counselor I

M. Arfa, CCIIA 12-9-05
M. Arfa Date
Correctional Counselor II

J.L. Clancy 12/13/05
J.L. Clancy Date
Facility Captain

D.S. Levorse C&PR 12-15-05
D.S. Levorse Date
Classification and Parole Representative

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

- DOCUMENTATION HEARING
 PAROLE CONSIDERATION HEARING
 PROGRESS HEARING

INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT.

TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, ie., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
03/05 to Present			PLACEMENT: CTF. CUSTODY: Medium A. VOC. TRAINING: None. ACADEMICS: None. WORK RECORD: Assigned to Maintenance Engineer Shop until 10/6/05 due to non-adverse transfer to CTF-Central. GROUP ACTIVITIES: Completed Anger Management. PSYCH. TREATMENT: None. PRISON BEHAVIOR: Remained positive. OTHER: None.

CORRECTIONAL COUNSELOR'S SIGNATURE

Mr. Rubio cct

BROWN, CHARLEY

E25371

CTF-SOLEDAD

DATE

12-9-05

MAR/2006

DISCIPLINARY SHEETCDC 128A's:

1/18/91	FOL	Cell conditions.
5/2/95	MCSP	Unauthorized hobby craft.
3/9/98	SOL	Not in compliance with grooming standards.
2/2/00	CTF	Unexcused absence.

CDC 115's:

8/20/92	FOL	3033(A)	Alteration of State Issued Shoes; Guilty: Assessed \$34.00 for replacement costs of Shoes.
8/29/95	MCSP	3005(c)	Mutual Combat; Guilty: Assessed 90 days loss of credit.
6/7/96	MCSP	3016	Possession of Methamphetamines: Guilty: Assessed 150 days loss of credits and six months non-contact visiting. Placed on <u>substance abuse program for six months.</u>
3/16/98	CSP-SOL	3005(b)	Failure to Comply with Grooming Standards: Guilty: Five days confined to Quarters, 30 days loss of night yard Privileges.
4/3/03	CTF-C	3005	Battery without serious injury: Guilty: Assessed 90 days credit forfeiture.

BROWN, CHARLES

E-25371

CTF

DEC 2004

BOARD OF PRISON TERMS

LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

STATE OF CALIFORNIA

- DOCUMENTATION HEARING
 PAROLE CONSIDERATION HEARING
 PROGRESS HEARING

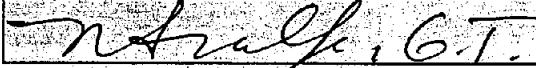
INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, ie., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
10/02 to 10/03			PLACEMENT: Housed in general population at CTF with the exception of placement in ADSEG due to a battery on an inmate. CUSTODY: MED A. VOCATIONAL TRAINING: Remained assigned to vocational plumbing from September 7, 2002 to April 6, 2003. Brown was unassigned due to ADSEG placement. Inmate Brown did not receive any progress reports during this period. ACADEMICS: None. WORK RECORD: None. GROUP ACTIVITIES: None. PSYCH. TREATMENT: None. PRISON BEHAVIOR: Brown had remained disciplinary free until 4/31/03 incident. See RVR dated 4/3/03 battery without serious injury OTHER: None.

CORRECTIONAL COUNSELOR'S SIGNATURE



BROWN, CHARLES

E-25371

CTF

DATE

10/18/04

DEC 2004

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

CONTINUATION SHEET: LIFE PRISONER : POSTCONVICTION PROGRESS REPORT

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
10/03 to 8/23/04			<p>PLACEMENT: Remained housed in general population at CTF.</p> <p>CUSTODY: MED A.</p> <p>VOCATIONAL TRAINING: None.</p> <p>ACADEMICS: None.</p> <p>WORK RECORD: None. Work group A2, privilege Group B effective 5/15/03.</p> <p>GROUP ACTIVITIES: Brown is currently attending Anger Management and will be receiving a chrono stating such.</p> <p>PSYCH. TREATMENT: None.</p> <p>PRISON BEHAVIOR: Brown has remained disciplinary free during this period.</p> <p>OTHER: None.</p>

ORDER:

BPT date advanced by

months.

BPT date affirmed without change.

PBR date advanced by

months.

PBR date affirmed without change.

SPECIAL CONDITIONS OF PAROLE:

Previously imposed conditions affirmed.

Add or modify

Schedule for Progress Hearing on appropriate institutional calendar

BROWN, CHARLES

E-25371

CTF

DEC 2004

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

EXHIBIT “E”

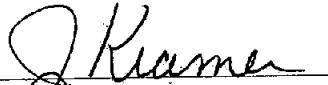
STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION
CDC-128-B (Rev.4/74)

NAME and NUMBER BROWN, C. E25371 ZW-106L

You attended meetings for the Wednesday AA Central A Group for the 1st Quarter (Jan, Feb, Mar) 2006. Since you began, you provide service to the Group with your attendance. Through this program, you are shown the tools available to you. By following 'The 12 Steps of Recovery' in your life, you can show your willingness to improve yourself.

Elected Position: None


J. Kramer
Group Staff Sponsor

Original : Central File
cc: Staff Sponsor
: Inmate

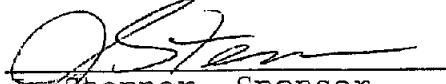
DATE: 4/5/06

Wednesday AA Central A -LAUDATORY CHRONO

I/m Brown, CDC No. E-25371

I/m Brown, CDC No. E-25371, has voluntarily participated in the Project C.H.A.N.G.E. program. Project C.H.A.N.G.E. is an in-depth program that provides inmates with the tools to learn to live successfully within a community setting. I/m Brown was an active participant and has completed all of his assignments in a timely fashion. He has completed a 44 week course of study which includes: self-esteem & assertiveness, goal setting, anger management, coping skills, stress reduction, drug/alcohol abuse, tolerance, parenting, domestic violence, life skills, and parole & release. I/m Brown is to be commended for using his spare time to better himself and has received a certificate of completion for this course.

Orig: C-File
cc: Writer
File
Inmate


J. Stenner, Sponsor
CTF North Library
CTF North Facility

INVESTIGATOR
SOLEDAD
CATHERINE L. HORN

PROJECT CHANGE

Diploma of Graduation

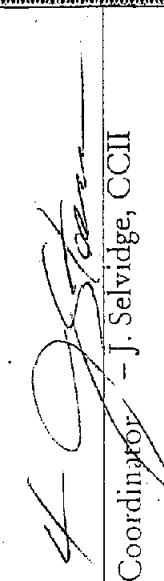
Be It Known That

C. Brown

has satisfactorily completed a 4 week course in Anger Management and is hereby awarded this certificate.

Given at Soledad, CA this 9th day of November, Two Thousand 2004

Sponsor - J. Stenner
Ser. No. 0404


Coordinator - J. Selridge, CCI

CERTIFICATE OF PARTICIPATION

Presented to

CHARLES LLOYD BROWN

For his outstanding effort and participation in the

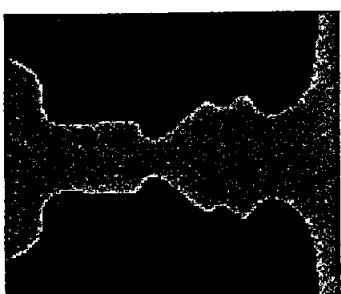
“THE ANGER WORKSHOP”

12-Week Self-Help Course

As prescribed by this ministry

With all rights, privileges, and honors thereto appertaining.

Given this 31st day of May, 2007, at Soledad, California



Dave Ewart

Dave Ewart
Course Instructor

Judge C. Lindsey
Judge C. Lindsey
Protestant Chaplain

PROJECT CHANGE

Diploma of Graduation

Be It Known That

C. Brown

has satisfactorily completed a 44 week course in Anger Management and is hereby awarded this certificate

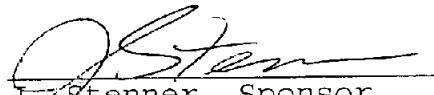
Given at Soledad, CA this 9th day of
November, Two Thousand 2004

Sponsor - J. Stenner
Ser. No. 0404

Coordinator - J. Selvidge, CCH

I/m Brown, CDC No. E-25371, has voluntarily participated in the Project C.H.A.N.G.E. program. Project C.H.A.N.G.E. is an in-depth program that provides inmates with the tools to learn to live successfully within a community setting. I/m Brown was an active participant and has completed all of his assignments in a timely fashion. He has completed a 44 week course of study which includes: self-esteem & assertiveness, goal setting, anger management, coping skills, stress reduction, drug/alcohol abuse, tolerance, parenting, domestic violence, life skills, and parole & release. I/m Brown is to be commended for using his spare time to better himself and has received a certificate of completion for this course.

Orig: C-File
cc: Writer
File
Inmate


J. Stenner, Sponsor
CTF North Library
CTF North Facility

November 9, 2004

(LAUDATORY - PROJECT C.H.A.N.G.E)

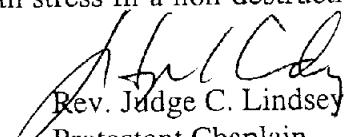
STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS
CDC-128B (8-87)

Name	BROWN, C.L.	CDC #	E-25371	Housing	ZW-106L
------	-------------	-------	---------	---------	---------

Mr. **BROWN, C.L.** E-25371, has completed the 12-week Anger Management Class, conducted in the Protestant Chapel. He now knows: the ways to handle anger; understand how pride, fear, loneliness and inferiority feed anger; uncovering the myths that perpetuate anger; identifying learned patterns of relating, thinking, and behaving in your life that influence your anger. The student accomplished the 13-Step Interactive Program and he now has the knowledge and understanding to deal with stress in a non-destructive manner. He is to be congratulated for his outstanding effort.

ORIG C-FILE
Cc Chaplain
Inmate


Rev. Judge C. Lindsey
Protestant Chaplain
Correctional Training Facility

Date: 5/31/07

LAUDATORY CHRONO

CTF-C

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION
CDC-128-B (Rev.4/74)

NAME and NUMBER	BROWN, C.	E25371	ZW-106L
-----------------	-----------	--------	---------

You attended meetings for the Wednesday AA Central A Group for the 1st Quarter (Jan, Feb, Mar) 2006. Since you began, you provide service to the Group with your attendance. Through this program, you are shown the tools available to you. By following 'The 12 Steps of Recovery' in your life, you can show your willingness to improve yourself.

Elected Position: None


J. Kramer
Group Staff Sponsor

Original : Central File
cc: Staff Sponsor
: Inmate

DATE: 4/5/06

Wednesday AA Central A -LAUDATORY CHRONO

Charles Brown, E-25371
Correctional Training Facility
P.O. Box 689 / East Dorm 153-Low
Soledad, CA.
93960-0689

From: (801) 944-1646
Charles Brown / E-25371
Correctional Training Facility
PO Box 689
East Dorn 153-Law
Soledad, CA 93960

SHP TO: (0000 000-0000)
for the Northern Dist. of Cal.
United State District Court
450 GOLDEN GATE AVE
PO BOX 36060
SAN FRANCISCO, CA 94102

Ship Date: 24JUL08
ActNgt: 20LB
System#: 4832721/NET1806
Account#: S WIP/REVENUE

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Prepaic

Charles Brown, E-25371
Correctional Training Facility
P.O. Box 689 / East Dorm 153-Low
Soledad, CA. 93960-0689

Dated this 17th day of July, 2008

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
450 Golden Gate Ave.
P.O. Box 36060
San Francisco, CA. 94102-3483

Re: PETITION FOR WRIT OF HABEAS CORPUS.

Dear Clerk of the Court,

Enclosed please find a true copy of petitioner's PETITION FOR WRIT OF HABEAS CORPUS, to be filed in your court.

Enclosed as well please a copy of the cover/caption sheet of my copy of this PETITION FOR WRIT OF HABEAS CORPUS to be stamped "filed" and returned in the S.A.S.E. I've provided.

Please note as well that I've sent this PETITION FOR WRIT OF HABEAS CORPUS through a third party so that the \$5.00 filing fee can be paid. I've provided PROOF OF SERVICE for chain of custody purposes. I've provided PROOF OF SERVICE from me to the third party signed by me and another signed by them PROOFING service of the petition to your court.

Thank you for your attention to these matters. Your help is greatly appreciated.

Sincerely,

Charles Brown

Charles Brown, E-25371
Petitioner in Pro Se

DUPLICATE

Court Name: U.S. District Court, NDCA
Division: 3
Receipt Number: 34611021737
Cashier ID: sprinka
Transaction Date: 07/28/2008
Payer Name: charles brown

WRIT OF HABEAS CORPUS
For: charles brown
Amount: \$5.00

CHECK

Check/Money Order Num: 11621175164
Amt Tendered: \$5.00

Total Due: \$5.00
Total Tendered: \$5.00
Change Amt: \$0.00

08-3596jf-pr

Checks and drafts are accepted
subject to collections and full
credit will only be given when the
check or draft has been accepted by
the financial institution on which
it was drawn.